

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING &
REGULATION BEFORE THE BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS & LAND SURVEYORS

In the Matter of:

CONSENT ORDER

Earl F. McKinney, P.E.,

Respondent.

IT APPEARS that a complaint has been filed with the South Carolina Board of Registration for Professional Engineers and Land Surveyors alleging that Respondent, Earl F. McKinney, P.E., has committed certain acts of misconduct on or about October 8, 1996 to present, to wit:

A&E Designers, Inc., under the direct supervisory control of the Respondent, unlawfully engaged in the practice of professional engineering in South Carolina without benefit of professional licensing in South Carolina, said practice of engineering being described as the preparation of structural, electrical, mechanical and fire protection design drawings for the Intown Suites project at Columbia, (Richland County), South Carolina.

IT FURTHER APPEARS that Respondent agrees that the above referenced conduct violated the South Carolina Engineering and Land Surveying Law, specifically SC Code Ann., Section 40-22-40, as amended.

IT FURTHER APPEARS that Respondent and the Board have reached an agreement in settlement of this matter. Further, in reaching this agreement the Board has taken into consideration the recent South Carolina Supreme Court Case Wilson v State Board of Medical Examiners 305 SC 194, 406 S.E. 2d 345(1991), and Respondent, by signing this agreement, agrees that the Board has scrupulously weighed the public interest in ensuring that the sanction imposed upon Respondent is designed to not punish Respondent but, rather, to protect the health, safety and welfare of the public at large.

In light of the aforementioned, the Board and the Respondent have reached the following Consent Agreement:

1. Respondent waives its right to appear before the Board and freely and voluntarily accepts the sanctions imposed herein.

EXHIBIT "I"

EXHIBIT D

8/1/97
Charles J. Ido, Chief Investigator
SC State Board of Registration for
Professional Engineers & Land Surveyors

THIS 3RD DAY OF February, 1998.
William A. Berry
MY COMMISSION EXPIRES: 02/05/2006

2. Respondent admits, and the Board agrees that the above violations were negligent rather than contemplated misconduct in the practice of engineering and justify the imposition of administrative sanctions by the South Carolina Board.

3. Respondent will accept a public reprimand.

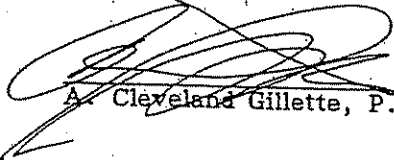
4. Respondent will pay a ~~\$1000~~ fine within 14 days.

5. Respondent understands and agrees that this Consent Order is in settlement of the issues raised by the South Carolina Board of Registration for Professional Engineers and Land Surveyors, and will have no affect on any complaint that may arise subsequent to this Consent Order.

THEREFORE, IT IS ORDERED that Earl F. McKinney, P.E. is hereby sanctioned according to the terms of this agreement and accepts said sanctions freely and voluntarily.

AND IT IS SO ORDERED.


SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING &
REGULATION, BOARD OF REGISTRATION FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS


A. Cleveland Gillette, P.L.S., CHAIRMAN

Columbia, SC

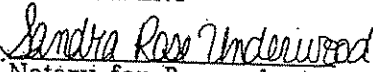
5-27, 1997

WE CONSENT:


Earl F. McKinney, P.E.
A&E Designers, Inc.


5/22/97
Date

RESPONDENT



Sandra Rose Underwood
Notary for Respondent

5/22/97
Date


My Commission Expires: April 9, 2001


Charles J. Ido
Investigator for Board

5/23/97
Date

CERTIFIED TRUE COPY
S/ 
Charles J. Ido, Chief Investigator
SC State Board of Registration for
Professional Engineers & Land Surveyors.

COPY

SWORN TO & SUBSCRIBED BEFORE ME
THIS 30th DAY OF February, 1998:

MY COMMISSION EXPIRES: 02/05/2000

NORTH CAROLINA

WAKE COUNTY

NORTH CAROLINA BOARD OF
EXAMINERS FOR
ENGINEERS AND SURVEYORS

RECEIVED
OCT 27 1999

N.C. BOARD OF EXAMINERS
FOR ENGINEERS AND SURVEYORS

IN THE MATTER OF:

EARL F. McKINNEY
PE No. 8541

CONSENT ORDER
Case No. V97-084

RECEIVED
DEC 20 1999

N.C. BOARD OF EXAMINERS
FOR ENGINEERS AND SURVEYORS

A Notice of Contemplated Board Action dated September 11, 1998, stated that the Review Committee of the Board recognized there was sufficient evidence that for design drawings entitled "MICROTEL INN RALEIGH, N.C.," dated April 1, 1997, Earl F. McKinney, PE (the Licensee), designated design drawings as "architectural" in violation of Board policy and submitted incomplete initial electrical design drawings for permitting. With the issuance of the Notice of Contemplated Board Action, the Licensee was notified of the settlement conference procedure. The Licensee requested through his attorney that an offer for settlement be considered by the settlement committee in lieu of a personal appearance before the committee.

The Licensee requests that this Consent Order be presented to the Settlement Committee in proposed settlement of this matter. The Licensee hereby agrees to this Consent Order admitting the violation as charged and waives his right to appear before the settlement committee or in a hearing before the Board and freely and voluntarily accepts the disciplinary action that is ordered herein. The Licensee further agrees that this case may be presented to the Board and discussed by the Board and that only upon acceptance of this Consent Order by the Board is the decision final. Once accepted by the Board, the decision cannot be appealed. The Licensee waives any

EXHIBIT E

objection to the ex parte communication during the consideration of this Consent Order in the event a Formal Hearing becomes necessary. The Licensee waives all further procedural steps and expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of this Consent Order.

It is therefore ordered and agreed that Earl F. McKinney, the Licensee, is levied with a civil penalty of two thousand dollars (\$2,000.00), such payment to be made within thirty (30) days after acceptance of the Consent Order by the Board.

This Consent Order is in settlement of the issues raised against the Licensee by the North Carolina Board of Examiners for Engineers and Surveyors in Case No. V97-084 only and does not include action in any other matter which may come before the Board.

This, the 3rd day of ~~October~~ ^{December}, 1999.

ACCEPTED BY:



NORTH CAROLINA BOARD OF
EXAMINERS FOR
ENGINEERS AND SURVEYORS

BY:

M. Frank Tyndall

M. FRANK TYNDALL

Chair

CONSENTED TO BY:

Earl F. McKinney

Earl F. McKinney

10/20/99
Date Signed

I, Andrew L. Ritter, Executive Director of the North Carolina Board of Examiners for Engineers and Surveyors, certify as custodian of the records of the Board that this document is a true and correct copy of the official record kept in the regular course of business, this the 2ND day of DECEMBER, 200.

Andrew L. Ritter
Andrew L. Ritter

PROF & VOCATIONAL
LICENSING DIVISION

PVL

nes Kobashigawa

HAUNANI H. ALM 4359
Regulated Industries Complaints
Office

Department of Commerce and
Affairs
235 South Beretania Street, 9th Floor
Honolulu, Hawaii 96813
Telephone: 586-2660

Attorney for Department of Commerce
and Consumer Affairs

BOARD OF PROFESSIONAL ENGINEERS,
ARCHITECTS, SURVEYORS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the
Professional Engineer's
License of

EARL F. MCKINNEY,

Respondent:

ENG 98-4-L

SETTLEMENT AGREEMENT PRIOR TO
FILING OF PETITION FOR
DISCIPLINARY ACTION AND
BOARD'S FINAL ORDER;
EXHIBIT "1"

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD FINAL ORDER

EARL F. MCKINNEY, (hereinafter "Respondent") and the

Department of Commerce and Consumer Affairs, by and through its
Regulated Industries Complaints Office (hereinafter "RICO"),
enter into this Settlement Agreement as follows:

WHEREAS, this matter having been referred to the
Department of Commerce and Consumer Affairs for prosecution or
resolution pursuant to Hawaii Revised Statutes ("H.R.S.")
Chapters 92 and 464;

WHEREAS, Respondent has been fully apprised of the
charge that would be brought against him should this matter
proceed to administrative hearing after the filing of a Petition
for Disciplinary Action in this matter;

EXHIBIT F

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

JAN 31 10 01 AM '00

HEARINGS OFFICE

DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

FEB 22 2 41 PM '00

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS
HEARINGS OFFICE
MAR 14 8 59 AM '00

WHEREAS, Respondent was at all times relevant herein, licensed as a professional engineer, License No. PE 6111;

WHEREAS, Respondent's current address is 2020 Liberty Road, Suite 105, Lexington, Kentucky 40505;

WHEREAS, Respondent is aware of his right to be represented by an attorney in this matter and is represented by Keith F. McKinney, Sr., Esq., 121 West Oak Street, Louisville, Kentucky 40203;

WHEREAS, Respondent has been fully apprised of his right to a hearing pursuant to HRS Chapters 91 and 92, and has voluntarily elected to waive his right to a hearing;

WHEREAS, Respondent understands he is subject to penalties, including but not limited to, revocation or suspension of his license in the event that violation of H.R.S. Chapters 436B and 464, or the rules promulgated pursuant thereto, is proven at a hearing;

WHEREAS, Respondent ~~admits~~ that there is sufficient evidence from which a finder of fact could determine that he violated HRS ~~§436B-12(15)~~ (failure to report in writing to the licensing authority any disciplinary decision issued against the licensee in another jurisdiction within thirty days of the disciplinary decision), however, Respondent wishes to settle this matter to avoid the risks and expenses of an administrative hearing; and

WHEREAS, the parties hereto desire to settle this matter without a hearing;

NOW, THEREFORE, RICO and Respondent agree, subject to the approval and order of the Board that:

1. Jurisdiction. The Board has jurisdiction over the subject matter herein and over the parties hereto.

2. Waiver of right to hearing. Pursuant to § 91-9(d), HRS, Respondent voluntarily waives his right to a hearing and agrees to a disposition of this case pursuant to the terms and conditions of this Settlement Agreement.

3. No coercion or duress. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress. Respondent acknowledges that he is fully aware that in so doing he is subject to disciplinary sanctions pursuant to the terms herein.

4. Basis of allegations: Respondent acknowledges that this action is based on the documents received by the State of Hawaii Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, from the South Carolina Board of Registration for Professional Engineers and Land Surveyors (hereinafter referred to as the "South Carolina Board"). See, a true and correct copy of the documents received from the South Carolina Board attached hereto and incorporated herein by reference as Exhibit "1".

5. Administrative Fine. Respondent agrees to pay an administrative fine of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). Said fine shall be paid in advance upon the signing of the

Settlement Agreement and shall be made by check or money order payable to the "DCCA Compliance Resolution Fund".

6. Compliance with South Carolina Consent Order.

Respondent states that he has fully complied with all terms and conditions imposed by the South Carolina Board under their May 27, 1997 Consent Order.

7. Failure to abide by terms of this Agreement. In

the event that Respondent fails to abide by any of the terms of the Settlement Agreement, Respondent agrees to the ~~revocation~~ of his license without further hearing, upon the Board's receipt of an Affidavit from RICO attesting to any such violation and/or failure by Respondent. Upon the revocation of Respondent's license, Respondent understands that he shall not apply for a license for a period of five (5) years. If Respondent's license is revoked, Respondent shall turn in all indicia of his licensure to the Executive Officer of the Board within five (5) days after receipt of notice that his license has been revoked.

8. Possible further sanction. The Board, at its

discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent fails to abide by the terms of this Settlement Agreement. Respondent will be in compliance with the terms and conditions of the Settlement Agreement upon proper payment of the administrative fine. If Respondent is in compliance with the terms and conditions of the Settlement Agreement, paragraphs 7 and 8 supra, will not be applicable.

9. Approval of the Board. Respondent is aware that this Settlement Agreement shall not become binding upon any of the parties hereto unless and until it is approved by the Board.

10. No objection if Board fails to approve. If the Board does not approve the Settlement Agreement, does not issue an order pursuant thereto or does not approve a lesser and/or alternative remedy and instead requires that this matter be presented for administrative hearing before a hearings officer of the Department of Commerce and Consumer Affairs in accordance with HRS Chapters 91 and 92, Respondent agrees that he will not raise any objection on any administrative and/or adjudicatory level on the basis that the Board has become disqualified to consider this case because of its review and consideration of the Settlement Agreement.

11. Ambiguities, if any, shall be construed to protect the consuming public. The language and terms of this Agreement are the product of negotiations between the parties hereto and/or their attorneys and the rule that ambiguities shall be construed against the drafter of this Agreement does not apply. The parties did not intend to use ambiguous language, but if any ambiguities exist, they should be construed against the parties in the manner which most completely protects the interest of the consuming public.


12. No reliance upon representations of RICO. Other than the matters specifically stated in this Agreement, neither RICO nor anyone acting on its behalf has made any representation

of fact, opinion or promise to Respondent to induce entry into this Agreement, and Respondent is not relying upon any statement, representations, opinions or promises made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Agreement or concerning any other matter or thing.

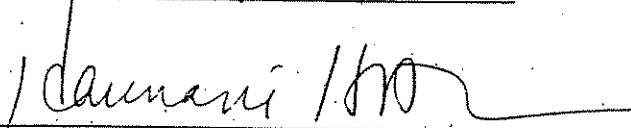
13. Complete Agreement. This Settlement Agreement:

- a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto;
- b) contains the entire agreement of the parties; and
- c) may only be modified, changed or amended by written instrument duly executed by all parties hereto.


DATED: 1/24/00, Kentucky, LEXINGTON.


EARL F. MCKINNEY
Respondent

DATED: Honolulu, Hawaii, January 28, 2000.


HAUNANI H. ALM.
Attorney for Petitioner

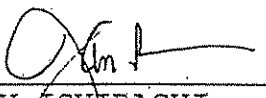
APPROVED AS TO FORM:


KEITH F. MCKINNEY, SR.
Attorney for Respondent

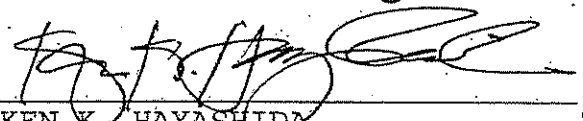
IN THE MATTER OF THE PROFESSIONAL ENGINEER'S LICENSE OF EARL F. MCKINNEY; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; EXHIBIT "1"; ENG 98-4-L

APPROVED AND SO ORDERED:
BOARD OF PROFESSIONAL ENGINEERS,
ARCHITECTS, SURVEYORS AND
LANDSCAPE ARCHITECTS


MIKE Y. MIURA
~~Chairperson~~


JAY ISHIBASHI
~~Vice~~ Chairperson


RUSSELL Y.J. CHUNG


KEN K. HAYASHIDA


LESTER H. INOUE

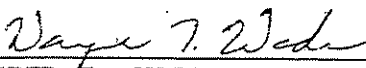

LAUREL MAU NAHME


GARY OURA


CAROL S. SAKATA

MAR 9 2000

DATE


WAYNE T. WADA
VICE CHAIRPERSON

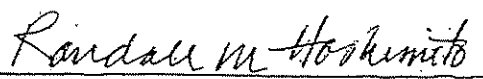

THEODORE E. GARDUQUE

KENDALL N.H. HEE

GARY B.K.T. LEE

WALLACE T. OKI

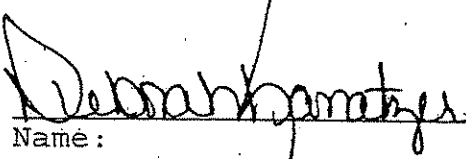

ARNALDO E. PREPOSE


RANDALL M. HASHIMOTO

STATE OF KENTUCKY

COUNTY OF FAYETTE)
) SS.
)

On this 24th day of JANUARY, 2000, before
me personally appeared EARL F. MCKINNEY, to me known to be the
person described in and who executed the foregoing instrument,
and acknowledged that he executed the same as his free act and
deed.



Name:
Notary Public
State of Kentucky

My Commission expires: 11/14/2000

STATE OF COLORADO

STATE BOARD OF REGISTRATION FOR PROFESSIONAL
ENGINEERS AND PROFESSIONAL LAND SURVEYORS
Angeline C. Kinnaird, Program Director

1560 Broadway, Suite 1300
Denver, Colorado 80202-5146
Phone (303) 894-7800
Fax (303) 894-7790
V/TDD (303) 894-7880
www.dora.state.co.us/engineers_surveyors

Department of Regulatory Agencies
Richard F. O'Donnell
Executive Director



Division of Registrations
Rosemary McCool
Director

RECEIVED

DEC - 5 2003

Bill Owens
Governor

State of Colorado

City and County of Denver

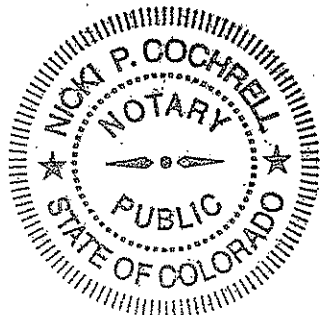
I, Angeline C. Kinnaird, Program Director for the Colorado Board of Registration for Professional Engineers and Professional Land Surveyors, am the official custodian of the records of the Board. I hereby certify that the enclosed is a true and correct copy of the Letters of Admonition issued to Earl F. McKinney, PE #16999, on March 14, 2001 and November 19, 2002.

Dated this 2nd day of December, 2003, Denver, Colorado


Angeline C. Kinnaird, Program Director

Subscribed and sworn to me this 2nd day of December, 2003.

My commission expires 10/9/07



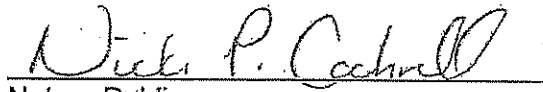

Notary Public

EXHIBIT G

STATE OF COLORADO

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

Angeline C. Kinnaird, Program Administrator
1560 Broadway, Suite 1370
Denver, CO 80202
Phone (303) 894-7788, FAX (303) 894-7790
www.dora.state.co.us/engineers_surveyors

Department of Regulatory Agencies

M. Michael Cooke
Executive Director

Division of Registrations

Bruce M. Douglas, Director



Bill Owens
Governor

March 14, 2001

Certified Mail

Return Receipt Requested, No 7000-0520-0012-1692-8025

Mr. Earl F. McKinney, PE
3171 W Roxburg Dr
Lexington KY 40503

RE: LETTER OF ADMONITION

Dear Mr. McKinney:

I represent the Colorado State Board of Registration for Professional Engineers and Professional Land Surveyors (the "Board"). The Board reviewed the disciplinary action taken against your professional engineering license by the North Carolina Board of Examiners for Engineers and Surveyors at its meeting on March 9, 2001. The Board determined that the facts disclosed thus far do not currently require the institution of formal disciplinary proceedings against your license to practice engineering in Colorado; however, pursuant to its authority under section 12-25-108 (1) (m), C.R.S., on March 9, 2001, the Board ordered that this letter of admonition be issued to you.

The Board finds that the facts which were revealed suggest that more likely than not you submitted incomplete initial electrical design drawings for permitting in the State of North Carolina. On the basis of this finding, the Board hereby admonishes you.

You are hereby advised that pursuant to C.R.S. 12-25-108(2), you have the right, within twenty (20) days after receipt of this letter of admonition, to make a written request to the Board that a formal hearing be conducted to adjudicate the propriety of the conduct upon which this letter is based. If you make a written request to the Board

Mr. Earl F. McKinney, PE
March 13, 2001
Page 2

for a hearing within twenty (20) days, this letter shall be deemed vacated and a disciplinary proceeding commenced and conducted in accordance with Professional Engineering Practice Laws, C.R.S. 12-25-101 through 12-25-119.

Sincerely,

FOR THE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND
PROFESSIONAL LAND SURVEYORS



Angelina C. Kinnaird
Program Administrator

ACK/jea

cc: Naomi Notman, Assistant Attorney General

STATE OF COLORADO

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

Angeline C. Kinnaird, Program Administrator

1560 Broadway, Suite 1370

Denver, CO 80202-5146

Phone (303) 894-7788

Fax (303) 894-7790

V/TDD (303) 894-7880

http://www.dora.state.co.us/engineers_surveyors

Department of Regulatory Agencies

M. Michael Cooke

Executive Director

Division of Registrations

Rosemary McCool

Director



Bill Owens
Governor

November 19, 2002

Mr. Earl F. McKinney
2020 Liberty Road Ste 105
Lexington KY 40505

Certified Mail

Return Receipt Requested, No. 7000-0520-0012-1692-8605

RE: LETTER OF ADMONITION

Dear Mr. McKinney:

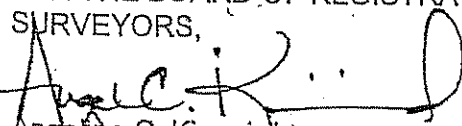
I represent the Colorado State Board of Registration for Professional Engineers and Professional Land Surveyors (the "Board"). The Board reviewed the disciplinary action taken against your professional engineering license by the California Board for Professional Engineers and Land Surveyors at its meeting on November 15, 2002. The Board determined that the facts disclosed thus far do not currently require the institution of formal disciplinary proceedings against your license to practice engineering in Colorado; however, pursuant to its authority under section 12-25-108 (1) (m), C.R.S., on November 15, 2002, the Board ordered that this letter of admonition be issued to you.

The Board finds that the facts which were revealed suggest that more likely than not you affixed your seal and signature on drawings which were outside of your discipline and that you practiced engineering with a lapsed license. On the basis of this finding, the Board hereby admonishes you.

Please note that this is a disciplinary action that will be reflected in the Board's records and is information that is available to the public.

You are hereby advised that pursuant to C.R.S. 12-25-108(2), you have the right, within twenty (20) days after receipt of this letter of admonition, to make a written request to the Board that a formal hearing be conducted to adjudicate the propriety of the conduct upon which this letter is based. If you make a written request to the Board for a hearing within twenty (20) days, this letter shall be deemed vacated and a disciplinary proceeding commenced and conducted in accordance with Professional Engineering Practice Laws, C.R.S. 12-25-101 through 12-25-119.

FOR THE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS,


Angeline C. Kinnaird
Program Administrator

ACK/gbr

cc: Naomi Notman, Assistant Attorney General

Handled By: [illegible]



FLORIDA BOARD OF PROFESSIONAL ENGINEERS

JEB BUSH, GOVERNOR

DIANE CARR, SECRETARY
DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION

RECEIVED
MAY 04 2004

Robert Matthews, P.E.
CHAIR
(CIVIL)
11/29/99-10/31/06

Terrell Rebane, P.E.
VICE CHAIR
(ELECTRICAL)
11/29/99-10/31/03

Anthony V. Bondada, Ph.D., P.E.
(CIVIL)
11/29/99-10/31/03

George R. Dwyos, P.E.
(EDUCATOR)
2/11/02-10/31/05

Ilvia Vilato Lacasa, P.E.
(ELECTRICAL)
11/29/99-10/31/02

James Gerry Miller, Ph.D., P.E.
(MECHANICAL)
11/1/97-10/31/05

Paul Tomasino, P.E.
(CIVIL)
2/11/02-10/31/05

Ildefonso Velazquez, Esquire
(PLANNING)
11/29/99-10/31/06

April 23, 2004

Patricia Munkel-Olson
The Minnesota Board of Architecture, Engineering,
Land Surveying, Landscape Architecture, Geoscience & Interior Design
85 East 7th Place, Suite 160
St. Paul, Minnesota 55101

RE: Earl F. McKinney, P.E.
PE 25274

Dear Ms. Munkel-Olson:

Your letter dated April 5, 2004, regarding a copy of any disciplinary action taken against the above referenced professional engineer was forwarded to me for a response.

Enclosed please find a copy of the Final Order Approving Settlement Stipulation, with attachments, that was filed in case number 02-0112 on May 13, 2003.

If you have any questions, please contact our office at (850) 521-0500.

Sincerely,


Teresa Baker

/tb

Enclosures

EXHIBIT H

Final Order No. BPR-2003-01274 Date: 5-13-03
FILED
Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nichols

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FEMC CASE NO.: 02-0112
LICENSE NO.: PE 25274

EARL F. MCKINNEY, P.E.,

Respondent.

FINAL ORDER APPROVING SETTLEMENT STIPULATION

THIS MATTER came before the Board of Professional Engineers (hereinafter referred to as the "Board" pursuant to Section 120.57(3), Florida Statutes, on April 2003, in Ft. Myers, Florida, for a determination of whether to accept the proposed Settlement Stipulation (a copy of which is attached and incorporated herein by reference) entered into between the parties in the above-styled case. The Petitioner was represented by Douglas Sunshine, Prosecuting Attorney. The Respondent was not present at the proceedings, and was not represented by counsel.

Upon consideration of the Administrative Complaint and the proposed Settlement Stipulation in this matter, and being otherwise fully advised in the premises,

it is hereby **ORDERED AND ADJUDGED:**

FILED
Florida Engineers Management Corporation
Clerk
CLERK Jessie Baker
DATE 5-13-2003

1. The proposed Settlement Stipulation is hereby approved and adopted in toto and incorporated herein by reference.

2. Respondent will adhere to and abide by all of the terms and conditions of the Stipulation.

3. This Order shall be placed in and become a part of Respondent's official records and shall become effective upon filing with the Clerk of the Florida Engineers Management Corporation.

DONE AND ORDERED on this 12th day of May, 2003, by the Florida Board of Professional Engineers.

BOARD OF PROFESSIONAL
ENGINEERS

R. Gerry Miller
R. GERRY MILLER, Ph.D., P.E.
CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been forwarded by certified mail to Earl F. McKinney, P.E., c/o Peter L. Ostermiller, Esquire, 239 South Fifth Street, Eighteenth Floor, Louisville, Kentucky 40202; and hand delivered to the Agency Clerk, Florida Engineers Management Corporation, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303, by 5:00 p.m., on this _____ day of _____, 2003.

NATALIE LOWE
ADMINISTRATOR

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

FEMC Case No. 02-0112

EARL F. McKINNEY, P.E.,

Respondent,

SETTLEMENT STIPULATION

Earl F. McKinney, P.E., hereinafter referred to as "Respondent," and the Florida Engineers Management Corporation, hereinafter referred to as "FEMC," hereby stipulate and agree to the following joint stipulation and Final Order of the Board, incorporating this Stipulation in the above-styled manner.

STIPULATED FACTS

1. For all times pertinent hereto, Respondent was a licensed engineer in the State of Florida, having been issued license number PE 25274.
2. Respondent was charged by an Administrative Complaint filed by the Florida Engineers Management Corporation, and properly served upon Respondent with violations of Chapters 471 and 455, Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed engineer, admits that in such capacity he is subject to provisions of Chapters 455 and 471, Florida Statutes, and the jurisdiction of the Department, FEMC, and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, constitute violations of Chapters 455 and 471, Florida Statutes, as alleged in the Complaint.

STIPULATED DISPOSITION OF LAW

1. Respondent shall, in the future, comply with Chapters 471 and 455, Florida Statutes, and the rules promulgated pursuant thereto.

2. Should Respondent fail to timely comply with the terms of the Final Order, this case will be submitted to the Probable Cause Panel for review and determination of whether additional disciplinary action should be taken.

3. Respondent agrees to pay costs of \$95.73 to the Board within thirty (30) days of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

4. Respondent acknowledges that neither his attendance at the Board Meeting when this Stipulation is presented, nor any continuing education or college level courses taken as a requirement of the terms of this Stipulation may be used to comply with the continuing education requirements of Chapter 61G15-22, Florida Administrative Code.

5. Respondent's license shall be suspended for two (2) years; however, the suspension is stayed.

6. Respondent shall be placed on probation for two (2) years with the following terms:

a. Respondent shall successfully complete a Board-approved course in Engineering Professionalism and Ethics within one (1) year of the date the Final Order adopting this Stipulation is filed. Prior to that date, Respondent shall submit to the Board a Certificate of

Completion. It is the Respondent's responsibility to notify the Board that he has completed the course in a timely manner.

b. Respondent shall successfully complete the Study Guide which has been prepared by the Board of Professional Engineers and which will be furnished to Respondent, regarding the Engineering Practice Act, Chapter 471, Florida Statutes, and the Rules of the Board of Professional Engineers. Respondent will complete and return the Study Guide within thirty (30) days of the date on which a Final Order incorporating this Settlement Stipulation is filed, to the Board of Professional Engineers at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.

c. Respondent's probation shall be tolled during the time that the Respondent is practicing exclusively outside the State of Florida. If, during the period of probation, Respondent practices exclusively outside the State of Florida, he shall immediately notify the Board in writing.

7. It is expressly understood that this Stipulation is subject to approval of the Board and FEMC and has no force and effect until the Board issues a Final Order adopting this agreement.

8. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Stipulation. Furthermore, should this joint Stipulation not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or illegally prejudice the board or any of its members from further participation, consideration or resolution of these proceedings.

9. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or otherwise challenge or contest the validity of the joint Stipulation of Facts, Conclusions of Law, imposition of discipline and the Final Order of the Board incorporating said Stipulation.

10. Respondent waives the right to seek any attorney's fees or costs from the Board in connection with this disciplinary proceeding.

WHEREFORE, the parties hereto request the Board to enter a Final Order accepting and implementing the terms contained herein.

Earl F. McKinney
Earl F. McKinney, P.E.
Respondent
Case No. 02-0112
(Signature must be notarized below)

Before me, personally appeared EARL F. MCKINNEY,
Whose identity is known to me by DRIVERS LIC.
(type of identification)

and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed by Respondent before me this 10th day of FEBRUARY, 2003.

Deborah Kanatz
NOTARY PUBLIC
My Commission Expires: 12/08/04

APPROVED this 25th day of FEBRUARY, 2003.

Natalie A. Lowe
Natalie A. Lowe, Administrator
Florida Board of Professional Engineers

Douglas D. Sunshine
BY: Douglas D. Sunshine
Prosecuting Attorney

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

Petitioner,

v.

FEMC Case No. 02-0112

EARL F. McKINNEY, P.E.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the Florida Engineers Management Corporation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Professional Engineers against Earl F. McKinney, P.E., hereinafter referred to as "Respondent". This Administrative Complaint is issued pursuant to Sections 120.60 and 471.038, Florida Statutes. Any proceeding concerning this complaint shall be conducted pursuant to Section 120.57, Florida Statutes. In support of this complaint, Petitioner alleges the following:

1. Petitioner is charged with providing administrative, investigative, and prosecutorial services to the Board of Professional Engineers pursuant to Section 471.038, Florida Statutes (1997). The Board of Professional Engineers is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes.

2. Respondent is and has been at all time material hereto a licensed professional engineer in the State of Florida, having been issued license number PE 25274. Respondent's last known address is 3439 McKinley Street, Hollywood, Florida 33021.

3. On July 25, 2002, the California Board for Professional Engineers and Land Surveyors issued Respondent a Decision and Order as a result of disciplinary action taken against his California professional engineering license.

COUNT ONE

4. Petitioner realleges and incorporates paragraphs one (1) through three (3) as if fully set forth in this Count One.

5. In the Order, the Respondent agreed to a Stipulated Settlement and Disciplinary Order in which a two-year suspension was imposed. The suspension was stayed and the Respondent's license was placed on probation for two years with terms and conditions resulting from the use of a stamp in California when Respondent's California certificate was not in force; and practicing electrical engineering in California without a registration.

6. Based on the foregoing, Respondent is charged with violating Section 455.227(1)(q), Florida Statutes, by violating Section 471.033(1)(c), Florida Statutes, to wit: having a license to practice engineering suspended or otherwise acted against by the licensing authority of another state for any act that would constitute a violation of Chapter 471 or Chapter 455.

WHEREFORE, the Petitioner respectfully requests the Board of Professional Engineers to enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case, other than costs

associated with an attorney's time, as provided for in Section 455.227(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 6th day of January, 2003.

Natalie Lowe
Administrator


BY: Douglas D. Sunshine
Prosecuting Attorney

COUNSEL FOR FEMC:

Douglas D. Sunshine
Prosecuting Attorney
Florida Engineers Management Corporation
2507 Callaway Road, Suite 200
Tallahassee, Florida 32303
Florida Bar No. 935263
DDS/tb
PCP: December 2, 2002
PCP Members: Rebane, Matthews, Seckinger

FILED
Department of Business and Professional Regulation
DEPUTY CLERK
CLERK Brandon M. Nichols
DATE 1-7-2003

FILED
Florida Engineers Management Corporation
Clerk
CLERK Jessica Baker
DATE 1-7-2003

Enforcement Detail Report

Case Number: D 270

Status: CLO

Subject: EARL FREDERICK MCKINNEY #41742,

Open Date: 12/15/1986

Complainant:

Confidential: No

Close Date: 10/30/1989

Basis for Closing: Violation Terminated

Referred to SOAH:

Investigator: Paul Cook

Internal: Yes

Categories:

Firm Registration: No

Rules:

Related Cases:

Firms:

Employers:

PE's:

Persons:

PE Number Name

41742 MCKINNEY, EARL FREDERICK

Comments:

THREE YR PROBATED SUSPENSION, 10-25-89. DR 3.1(II), DR 6.1(IV), (VI), & (IX); DR 6.2; BR 131.138(2) & (8).
ALLOWED SEAL ON WORK BEYOND HIS EXPERTISE, WITH RUBBER STAMP SIGNATURE, DONE BY OTHERS
W/O SUPERVISION, LACKING CONTROL OVER USE OF SEAL.

Under current state retention policies this file was retained for
a three year period and then subsequently destroyed.

EXHIBIT I

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS
AUSTIN, TEXAS

IN THE MATTER OF	§	CAUSE NO. D-270
EARL F. MCKINNEY, P.E.	§	
IRVING	§	

FINAL ORDER

This case was heard on January 12-13, 1989, on a complaint dated July 29, 1988. Mr. McKinney was charged with violating the following of 1985 Rules of the Texas State Board of Registration for Professional Engineers (hereinafter "Board"):

1. Board Rule 131.138(2)
2. Board Rule 131.138(6)
3. Board Rule 131.138(8)
4. Disciplinary Rule 3.1(i)
5. Disciplinary Rule 3.1(ii)
6. Disciplinary Rule 6.1(II)
7. Disciplinary Rule 6.1(IV) (mislabelled in Complaint as 6.1(III))
8. Disciplinary Rule 6.1(VI)
9. Disciplinary Rule 6.1(IX)
10. Disciplinary Rule 6.2

The Hearings Examiner's Proposal for Decision issued July 21, 1989, contained 63 Findings of Fact and 8 Conclusions of Law.

The Board adopts the following 62 of the 63 Findings of Fact of the Hearing Examiner; and does not adopt Finding of

Fact No. 45.

1. Earl F. McKinney has a B.S. degree in mechanical engineering from the University of Kentucky.
2. Earl F. McKinney claimed he had civil and structural engineering experience at the contested hearing.
3. Earl F. McKinney personally designed every item, structural, equipment, MP&E and civil on the Lewisville Grandy's restaurant.
4. Earl F. McKinney stated he was qualified to do City of Irving Animal Shelter civil and structural design but that he did not do it.
5. Earl F. McKinney signed or sealed on the designs for Long John Silver restaurants in Texas and the designs involved civil and structural engineering.
6. Ben E. Skaggs, employee at Hamill & McKinney between 1979 and 1984, stated that Earl F. McKinney was qualified to perform civil and structural engineering on small commercial buildings but not high-rises.
7. Earl F. McKinney stated at the informal hearing with Board staff that he was not proficient in civil and structural engineering.
8. Earl F. McKinney made no claim of civil or structural engineering experience on his SER despite detailed instructions on the SER with respect to experience claims.
9. Earl F. McKinney is not registered in any state as a civil or structural engineer.

10. Earl F. McKinney did not have a Texas licensed engineer on his staff in Texas with a claim of civil or structural expertise until February 16, 1987.

11. Earl F. McKinney stated to Board in letter dated March 10, 1987 (Plaintiff's Exhibit 22) that he had Texas licensed engineers on his staff who were proficient in civil and structural engineering.

12. Earl F. McKinney stated to Board in letter of March 10, 1987 (Plaintiff's Exhibit 22) that he had a legally qualified and licensed staff member who analyzed soils investigation for Belton McDonald's.

13. Earl F. McKinney could not remember who the qualified engineers on his staff were who were proficient in civil and structural engineering to whom he referred in his letter to the Board on March 10, 1987 (Plaintiff's Exhibit 22) and Earl F. McKinney did not want time to determine the answer.

14. Earl F. McKinney could not remember who the qualified soils investigation analyst was.

15. Civil engineering and structural engineering were performed on the Belton McDonald's project.

16. Civil engineering and structural engineering were performed on the Wylie Sewer Force Main.

17. Civil engineering and structural engineering were performed on the Irving Animal Shelter Project.

18. Drawings containing civil and structural engineering were sealed by Earl F. McKinney.

19. Earl F. McKinney's seal appeared on a survey in the Belton McDonald's project.
20. Earl F. McKinney is not a licensed surveyor.
21. Hamill & McKinney averaged six projects per year in Texas which required the use of a professional engineer's seal.
22. Emmett L. Sacrey, employee at Hamill & McKinney between 1979 and 1982, stated that Earl F. McKinney's seal was kept locked up and was under James M. Hamill's control.
23. In prototypical designs of McDonald's Earl F. McKinney has allowed his seal to be used by others because of his firm's on-going involvement with McDonald's and familiarity with prototypes engineering designs provided a meaningful basis for exercise of performed responsible and assumes no negligent use of seal will occur.
24. At Hamill & McKinney the decision about whose seal is placed on the work is made based on the determination of who will be liable and what the client wants.
25. James Hamill applied Earl F. McKinney's seal when Earl F. McKinney requested it on occasion when Earl F. McKinney had copy of document and was fully familiar with drawing.
26. James Hamill sealed and rubber stamped Belton McDonald's plans with Earl F. McKinney's engineer seal and signature replica.
27. James Hamill is not a professional engineer.
28. Earl F. McKinney's seal and signature stamp were in the

custody and control of James Hamill.

29. Earl F. McKinney personally signed the Wylie Sewer Force Main Project.

30. Earl F. McKinney personally applied his seal and signature replica to the Wylie Sewer Project and the City of Irving Animal Shelter drawings.

31. Earl F. McKinney did not wet sign the Grandy's Restaurant plans, he used his signature stamp.

32. Earl F. McKinney did not know he had to personally sign the plans at the time he used a signature stamp on the Grandy's plans.

33. Earl F. McKinney did not receive some newsletters of the State of Texas.

34. Earl F. McKinney does not know if he requested newsletters to be sent to a particular address.

35. One of the primary functions of the official newsletter of the Texas State Board of Registration for Professional Engineers is to inform the licensees about rules changes.

36. Rules changes on seals were discussed in the January, 1985 official newsletter of the Texas State Board of Registration for Professional Engineers.

37. The Texas State Board of Registration for Professional Engineers acknowledged in its January, 1981 newsletter that many engineers would not receive notice of the rules change regarding seals.

38. Earl F. McKinney has erroneously sealed and stamped

outside his discipline on two occasions with respect to surveys and once with respect to architecture.

39. Earl F. McKinney makes no claims to expertise in the survey or architecture disciplines, the erroneous stamping was accidental.

40. James Hamill signed an agreed cease and desist order with the Texas Board of Architectural Examiners relating to the use of Earl F. McKinney's engineering seal on the Belton McDonald's.

41. Earl F. McKinney and James Hamill used to seal all sheets in project to expedite project because as principals they assumed they were responsible for all the information contained in the sheets but they no longer follow this procedure.

42. Earl F. McKinney signs and seals all documents prepared by firm whether each line on sheet is used under direct supervision or not.

43. Plan stamping is defined as

"The after-the-fact approval of engineering already done (sizing, calculations, etc.) by unlicensed individuals not in the employ of or subordinate to the sealing engineer."

in the official newsletter of the Texas State Board of Registration for Professional Engineers.

44. Robert Clarkton, former employee of Hamill & McKinney during the period 1981 to 1984, stated that designs prepared by a structural engineer were stamped by Earl F. McKinney.

46. Robert Clarkston drew the plans for the City of Irving

Animal Shelter.

47. According to Robert Clarkston project drawings were stamped and sealed on a same day basis even when Earl F. McKinney was not in the Dallas, Texas office.

48. Robert Clarkston stated he had no way of knowing whether Earl F. McKinney personally reviewed drawings bearing Earl F. McKinney's seal and signature.

49. Paul Mills and Roy Wayne Barr drafted and designed the Wylie Sewer Project.

50. Earl F. McKinney states he is in Irving office two to three times per month.

51. Randy Hagens and Earl F. McKinney reviewed Wylie Sewer Project plans.

52. The Grandy's of Lewisville, Texas project plans were drawn by Emmett Sacrey under Earl F. McKinney and James Hamill's direct supervision.

53. Earl F. McKinney sealed plans when he had reviewed plans and when he took responsibility for the project.

54. During Ben Skaggs employment with Hamill & McKinney Earl F. McKinney was almost always present in the Irving office after regular office hours.

55. Texas Board of Architect's investigator Tom Davis' file memo dated June 9, 1987 in connection with James Hamill investigation, which memo covers a conversation with Ben Skaggs wherein Ben Skaggs is reported to have said Earl F. McKinney came to the Dallas office every two to three weeks

to review projects with the Dallas staff.

56. Hamill & McKinney shipped plans to Lexington for review by Earl F. McKinney by federal express and express mail.

57. Ben Skaggs stated that Hamill & McKinney's firm was set up to handle a large number of small projects very smoothly.

58. Earl F. McKinney stated that every time his seal was applied between 1984 and 1988 the plans were reviewed by him.

59. Earl F. McKinney's seal and signature were never applied without his review because the seal and signature created an assumption of liability.

60. Earl F. McKinney reviewed the design work of structural engineer Spencer and drafter Clarkston on the City of Irving Animal Shelter.

61. Earl F. McKinney is a registered professional engineer in 49 states including Texas.

62. Earl F. McKinney has never had a disciplinary hearing in any state nor has he been sued for malpractice.

63. Hamill & McKinney has never been sued for malpractice.

The Board adopts the following additional Findings of Fact:

64. On the Irving Animal Shelter, an outside consultant did the structural design drawings.

65. Earl F. McKinney signed and sealed the Irving Animal Shelter structural design drawings.

66. The Irving Animal Shelter structural design drawings were not produced under Earl F. McKinney's responsible

supervision.

67. Paul Mills, a non-engineer and a non-registrant, had primary design responsibility for the Wylie Force Main Sewer Project.

68. Earl F. McKinney signed and sealed every sheet of the Wylie Force Main Sewer Project which was submitted to the City of Wylie.

69. Earl F. McKinney participated in only a portion of the design work on the Wylie Force Main Sewer Project and Paul Mills did the rest.

The Board adopts the following Conclusions of Law:

1. Earl F. McKinney violated Disciplinary Rule 3.1(ii) of the Texas Board of Registration for Professional Engineers.

The engineer shall not:

(ii) affix his signature or seal to any engineering plan or document dealing with subject matter on which he is not qualified by education or experience to form a dependable judgment;

2. Earl F. McKinney violated Disciplinary Rule 6.1 (IX) of the Texas Board of Registration for Professional Engineers.

The engineer shall not:

(IX) perform any acts, allow any omissions or make any assertions or representations which are fraudulent, deceitful or misleading, or which in any manner whatsoever tend to create a misleading impression;

3. Earl F. McKinney violated Disciplinary Rule 6.2 of the Texas Board of Registration for Professional Engineers.

The engineer shall be personally and professionally responsible and accountable for the care, custody, control and use of his engineer's seal, his

professional signature and identification. The engineer whose seal has been lost, misplaced or stolen shall, upon discovery of its loss, report same immediately to the board, which may invalidate the stolen registration number of said seal, if it deems this necessary and issue another registration number to said engineer.

4. Earl F. McKinney violated Texas Board of Registration for Professional Engineers Rule 131.138 (2).

(2) Since after-the-fact ratification of a nonprofessional's prior unsupervised work product is generally alien to professional standards and presumably could lead to interim abuse and unethical practices, the sealing of work which was not performed by or under the responsible charge and supervision of the registrant as required by sections 1.2, 17, 18, 19 and 20(c) of the Act is considered to be "plan stamping" and regarded as being in violation of the Act and contributing to the unauthorized practice of engineering by unlicensed individuals.

5. Earl F. McKinney violated Texas Board of Registration for Professional Engineers Rule 131.138 (8).

(8) Whenever an engineer's seal impression is required under the Texas Engineering Practice Act, all engineering registrants must place their normal signatures and date of execution in close proximity to their seal impressions. The use of signature reproductions, such as rubber stamps or other facsimiles, shall not be permitted in lieu of actual signatures.

6. Earl F. McKinney violated Texas Board of Registration for Professional Engineers Rule 131.151 (7)(B)(i)(IV), which provides that an engineer shall not:

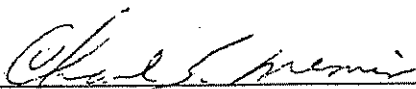
(IV) fail to exercise reasonable care or diligence to prevent his partners, associates, and employees from engaging in conduct which, if done by him, would violate any provision of the Texas Engineering Practice Act, general board rule, or any disciplinary rule.

7. Earl F. McKinney violated Texas Board of Registration for Professional Engineers Rule 131.151 (7)(B)(ii), which provides that an engineer shall not:

(VI) engage in any conduct that discredits or tends to discredit the profession of engineering.


It is therefore ordered that the Engineering Registration of Earl F. McKinney, Jr., P.E., Number 41742 be, and hereby is suspended for a period of 3 years, the suspension to be probated for a term of 3 years, on condition that any violations of the Engineering Practice Act which have been found in this contested case, if committed again during the above term of years and subsequent to the rendition of a final order in this cause, will be grounds for a revocation of probation, at which time Respondent's license may be fully suspended, and the Respondent be prohibited from practicing Engineering in this State for the full period initially assessed.


SIGNED on this the 20th day of December, 1989.



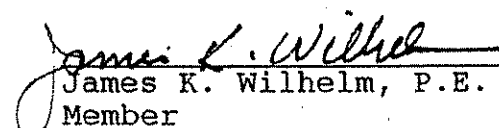
CHARLES E. NEMIR, P.E.
Executive Director
Texas State Board of Registration
for Professional Engineers

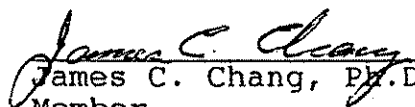
BOARD MEMBERS:

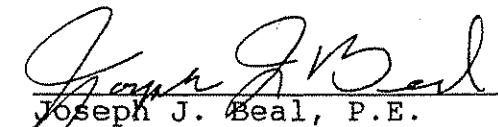

James Ken Newman
Chairman


E. D. Dorchester, P.E.
Vice Chairman


Jose I. Novoa, P.E.
Secretary


James K. Wilhelm, P.E.
Member


James C. Chang, Ph.D., P.E.
Member



Joseph J. Beal, P.E.
Member

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded by certified mail, return receipt requested, to:

Earl F. McKinney, P.E.
Hamill and McKinney
2670 Wilhite Drive
Lexington, KY 40503

on this the 20th day of December, 1989.


Charles E. Nemir, P.E.
Executive Director

Enforcement Detail Report

Case Number: D 1034

Status: CLO

Subject: EARL FREDERICK MCKINNEY #41742,

Open Date: 2/18/1999

Complainant:

Confidential: No

Close Date: 9/11/2002

Basis for Closing: Violation Terminated

Referred to SOAH:

Investigator: Paul Cook

Internal: No

Categories:

Firm Registration: No

Rules:

Related Cases:

Firms:

Employers:

PE's:

Persons:

PE Number Name

41742 MCKINNEY, EARL FREDERICK

Comments:

THIS MATTER WAS INITIATED BASED ON AN INVESTIGATION BY THE KENTUCKY BOARD AND INFORMATION PROVIDED TO US BY THE CITY OF ARLINGTON BUILDING OFFICIAL'S OFFICE ON MR. MCKINNEY'S PRACTICE IN FIELDS WHERE HE IS NOT COMPETENT IN BY EDUCATION AND EXPERIENCE. FOR INFORMATION, OUR BOARD TOOK ACTION AGAINST MR. MCKINNEY IN 1989 FOR AMONG OTHER THINGS THE PRACTICE OF CIVIL AND STRUCTURAL ENGINEERING. SINCE 1989 MR. MCKINNEY HAS NOT SHOWN ANY ADDITIONAL EDUCATION OR EXPERIENCE IN CIVIL AND STRUCTURAL ENGINEERING. BASED UPON THIS VIOLATION OF THE ACT AND BOARD RULES THE BOARD ACCEPTED AN AGREED BOARD ORDER SIGNED BY MR. MCKINNEY AND HIS ATTORNEY FOR A THREE YEAR PROBATED SUSPENSION OF HIS LICENSE; HE AGREED NOT TO PRACTICE IN THE AREA OF CIVIL OR STRUCTURAL ENGINEERING DURING THE PROBATED SUSPENSION PERIOD; AND AGREED TO PAY AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$3,500. THE ADMIN PENALTY IS DUE BY OCTOBER 5, 2002. THE AGREED BOARD ORDER WAS ACCEPTED BY THE BOARD ON SEPTEMBER 5, 2002.

Under current state retention policies this file was retained for a three year period and then subsequently destroyed.


EXHIBIT J

PETER L. OSTERMILLER

ATTORNEY AT LAW

KENTUCKY HOME LIFE BUILDING
EIGHTEENTH FLOOR
239 SOUTH FIFTH STREET
LOUISVILLE, KENTUCKY 40202

SEP 10 2002

REC'D BY: 

TELEPHONE: (502) 736-8100

FAX: (502) 736-8129

E-MAIL: peterlo@ploesq.com

September 4, 2002

Paul D. Cook
Director of Enforcement
Texas Board of Professional Engineers
1917 I. H. 35 South
Austin, TX 78741

Re: Earl F. McKinney, P.E., D-1034

Dear Mr. Cook:

Following up on our earlier telephone conversation, enclosed is a copy of the Agreed Board Order which Mr. McKinney and I have signed. I have placed a copy of this in the mail to you and I am also faxing this down to you so you can have this in advance of the September 5 meeting of the Board.

If you have any questions, please give me a call.

Very truly yours,


Peter L. Ostermiller

PLO/cas

Enclosure

cc: Earl McKinney

AGREED BOARD ORDER

IN THE MATTER OF

BEFORE THE TEXAS

EARL F. MCKINNEY P.E.

BOARD OF

LICENSE NO. 41742(MEC)

PROFESSIONAL ENGINEERS

FILE: D-1034

On this day came to be considered by the Texas Board of Professional Engineers (Board), the matter of Mr. Earl F. McKinney, P.E., hereafter known as "Respondent", License Number 41742(MEC), 3171 Roxburg Drive, Lexington, Kentucky 40503.

By letter dated October 24, 2000, the Board gave preliminary notice to Respondent of its intentions to take disciplinary action against him/har as a result of an official complaint and subsequent inquiry. The inquiry produced evidence indicating that Respondent may have violated the Texas Engineering Practice Act (Act) and Board Rules. The proceeding may include the scheduling of a formal public hearing to consider the matters outlined below. The potential charges against Respondent that would be presented by the Board to the State Office of Administrative Hearings if it were necessary to schedule a formal public hearing consist of the following:

- On December 20, 1989, the Board suspended your Texas license for a period of three years with the entire period to be probated for violation of the Act and board rules. A portion of this offense involved the sealing of plans for civil and structural work, a discipline where you lacked education and experience to perform adequately. Since December 20, 1989, Respondent has not provided the Board with any information showing expertise in the civil/structural discipline. However, on May 29, 1997, Respondent affixed his Texas engineer seal to the structural and foundation plans for the Intown Suites, 2601 South Cooper Street, Arlington, Texas. Since Respondent has not shown any formal education and experience in the field of structural and civil/foundation engineering since the December 1989 formal Board action, it appears that he is not competent in those areas of engineering. Board Rule 131.153 (a) and (b).
- By affixing his Texas engineer seal to the foundation and structural engineering plans for the Intown Suites, Arlington, Texas, Respondent represented to the local permitting agency and his client that he is competent in those engineering disciplines. This representation appears to be fraudulent, deceitful and misleading since Respondent has not shown competency in those engineering disciplines. Board Rule 131.156(a) (9) (amended as 131.155(b) (3) on 1-1-99).
- Respondent's practice of engineering in disciplines where he is not competent endangers the health, safety and welfare of the general public of Texas. Board Rule 131.151 (amended as 131.151(b) on 1-1-99).

An Informal Conference was held at the Board Office, 1917 IH '35 South, Austin, Texas, on April 18, 2001, with Respondent accompanied by his attorney, Mr. Peter L. Ostermiller, Esq., in conjunction with Mr. Govind Nadkarni, P.E., Board Member; Ms. Victoria J.L. Hsu, P.E., Executive Director; Mr. Frank J. Knapp, Jr., Assistant Attorney General; and Mr. Paul D. Cook, Director of Enforcement. By his signature on this Order, Respondent does hereby waive his right to Notice of Hearing before the State Office of Administrative Hearings

and/or the Texas Board of Professional Engineers, and judicial review of this Order, all of which are rights granted him under the provisions of the Administrative Procedure Act, Sections 2001.001-2001.902 Texas Government Code and/or Sections 2003.001-2003.046, Texas Government Code.

After discussion of the matters previously outlined in this Order relative to this inquiry, Respondent agreed to the entry of a Board Order dispensing with the need for further administrative action in this matter. By his signature on this Order, Respondent neither admits nor denies the truth of the matters previously set forth in this Order.

Respondent agrees and consents to the issuance of an Order for a three-year suspension of his Texas engineer license with the entire period to be fully probated contingent upon his payment of an administrative penalty in the amount of \$3,500 to the Board within 30 days from the date the Order is accepted by the Board. Respondent further agrees that he will not practice civil or structural engineering during the probated period unless during the said probation he successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying. The probation is also contingent upon Respondent not being found in violation of a separate offense of the Act or board rules during said period.

WAIVER, CONSENT and AGREEMENT dated this 4th day of September, 2002.

Earl F. McKinney
Earl F. McKinney, P.E.
Respondent

Peter L. Ostermiller
Peter L. Ostermiller, Esq.
Counsel for Respondent

AGREED BOARD ORDER

IN THE MATTER OF

EARL F. MCKINNEY P.E.

LICENSE NO. 41742 (MEC)

FILE: D-1034

BEFORE THE TEXAS

BOARD OF

PROFESSIONAL ENGINEERS

On this day came to be considered by the Texas Board of Professional Engineers (Board), the matter of Mr. Earl F. McKinney, P.E., hereafter known as "Respondent", License Number 41742 (MEC), 3171 Roxburg Drive, Lexington, Kentucky 40503.

By letter dated October 24, 2000, the Board gave preliminary notice to Respondent of its intentions to take disciplinary action against him/her as a result of an official complaint and subsequent inquiry. The inquiry produced evidence indicating that Respondent may have violated the Texas Engineering Practice Act (Act) and Board Rules. The proceeding may include the scheduling of a formal public hearing to consider the matters outlined below. The potential charges against Respondent that would be presented by the Board to the State Office of Administrative Hearings if it were necessary to schedule a formal public hearing consist of the following:

- On December 20, 1989, the Board suspended your Texas license for a period of three years with the entire period to be probated for violation of the Act and board rules. A portion of this offense involved the sealing of plans for civil and structural work, a discipline where you lacked education and experience to perform adequately. Since December 20, 1989, Respondent has not provided the Board with any information showing expertise in the civil/structural discipline. However, on May 29, 1997, Respondent affixed his Texas engineer seal to the structural and foundation plans for the Intown Suites, 2601 South Cooper Street, Arlington, Texas. Since Respondent has not shown any formal education and experience in the field of structural and civil/foundation engineering since the December 1989 formal Board action, it appears that he is not competent in those areas of engineering. Board Rule 131.153 (a) and (b).
- By affixing his Texas engineer seal to the foundation and structural engineering plans for the Intown Suites, Arlington, Texas, Respondent represented to the local permitting agency and his client that he is competent in those engineering disciplines. This representation appears to be fraudulent, deceitful and misleading since Respondent has not shown competency in those engineering disciplines. Board Rule 131.156 (a) (9) (amended as 131.155 (b) (3) on 1-1-99).
- Respondent's practice of engineering in disciplines where he is not competent endangers the health, safety and welfare of the general public of Texas. Board Rule 131.151 (amended as 131.151 (b) on 1-1-99).

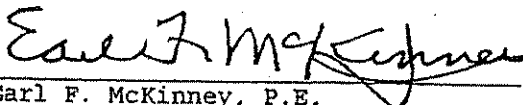
An Informal Conference was held at the Board Office, 1917 IH 35 South, Austin, Texas, on April 18, 2001, with Respondent accompanied by his attorney, Mr. Peter L. Ostermiller, Esq., in conjunction with Mr. Govind Nadkarni, P.E., Board Member; Ms. Victoria J.L. Hsu, P.E., Executive Director; Mr. Frank J. Knapp, Jr., Assistant Attorney General; and Mr. Paul D. Cook, Director of Enforcement. By his signature on this Order, Respondent does hereby waive his right to Notice of Hearing before the State Office of Administrative Hearings

and/or the Texas Board of Professional Engineers, and judicial review of this Order, all of which are rights granted him under the provisions of the Administrative Procedure Act, Sections 2001.001-2001.902 Texas Government Code and/or Sections 2003.001-2003.046, Texas Government Code.


After discussion of the matters previously outlined in this Order relative to this inquiry, Respondent agreed to the entry of a Board Order dispensing with the need for further administrative action in this matter. By his signature on this Order, Respondent neither admits nor denies the truth of the matters previously set forth in this Order.

Respondent agrees and consents to the issuance of an Order for a three-year suspension of his Texas engineer license with the entire period to be fully probated contingent upon his payment of an administrative penalty in the amount of \$3,500 to the Board within 30 days from the date the Order is accepted by the Board. Respondent further agrees that he will not practice civil or structural engineering during the probated period unless during the said probation he successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying. The probation is also contingent upon Respondent not being found in violation of a separate offense of the Act or board rules during said period.

WAIVER, CONSENT and AGREEMENT dated this _____ day of _____, 2002.



Earl F. McKinney, P.E.
Respondent


Peter L. Ostermiller, Esq.
Counsel for Respondent

ORDER

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Professional Engineers does hereby issue a three-year suspension of the Texas engineer license held by Mr. Earl P. McKinney, P.E., License Number 41742, for conduct alleged in the foregoing Agreed Board Order with the entire period to be fully probated contingent upon his payment of an administrative penalty in the amount of \$3,500 to the Board within 30 days from the date the Order is accepted by the Board. Respondent further agrees that he will not practice civil or structural engineering during the probated period unless during the said probation he successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying. The probation is also contingent upon Respondent not being found in violation of a separate offense of the Act or board rules during said period.

And it is so ordered.

SIGNED and DATED this _____ day of _____, 2002.

FOR THE BOARD:

Victoria J.L. Hsu, P.E.
Executive Director

APPROVED AS TO FORM:

Barbara H. Owens
General Counsel for the Board

CERTIFICATE OF SERVICE

I certify that I have this _____ day of _____, 2002, served copies of the foregoing Agreed Board Order to all parties to this proceeding by Certified Mail No. _____.

Victoria J.L. Hsu, P.E.
Executive Director

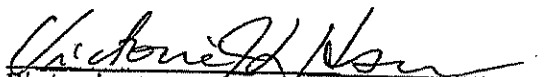
ORDER

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Professional Engineers does hereby issue a three-year suspension of the Texas engineer license held by Mr. Earl P. McKinney, P.E., License Number 41742, for conduct alleged in the foregoing Agreed Board Order with the entire period to be fully probated contingent upon his payment of an administrative penalty in the amount of \$3,500 to the Board within 30 days from the date the Order is accepted by the Board. Respondent further agrees that he will not practice civil or structural engineering during the probated period unless during the said probation he successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying. The probation is also contingent upon Respondent not being found in violation of a separate offense of the Act or board rules during said period.


And it is so ordered.

SIGNED and DATED this 5th day of September, 2002.

FOR THE BOARD:



Victoria J.L. Hsu, P.E.
Executive Director

APPROVED AS TO FORM:


Barbara H. OWENS
General Counsel for the Board

CERTIFICATE OF SERVICE

I certify that I have this 11th day of September, 2002, served copies of the foregoing Agreed Board Order to all parties to this proceeding by Certified Mail No. 70010320000096821601.


Victoria J.L. Hsu, P.E.
Executive Director

Enforcement Detail Report

Case Number: D 1398

Status: CLO

Subject: EARL FREDERICK MCKINNEY #41742,

Open Date: 10/4/2002

Complainant:

Confidential: No

Close Date: 10/13/2003

Basis for Closing: Violation Terminated

Referred to SOAH:

Investigator: Chris Kimbrell

Internal: Yes

Categories:

Firm Registration: No

Other

Rules:

Related Cases:

Firms:

Employers:

PE's:

Persons:

PE Number Name

41742 MCKINNEY, EARL FREDERICK

Comments:

INFORMATION/DOCUMENTATION WAS PROVIDED BY THE ATTORNEY GENERAL LIAISON, ENFORCEMENT UNIT, CALIFORNIA BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, SHOWING THAT MR. MCKINNEY ACCEPTED AND SIGNED A STIPULATED SETTLEMENT AND DISCIPLINARY ORDER (ORDER) THAT BECAME EFFECTIVE AUGUST 23, 2002, IN THE STATE OF CALIFORNIA. THE ORDER IDENTIFIED SEVERAL ISSUES THAT LED TO THE CALIFORNIA BOARD'S ACTION; HOWEVER, THE ONLY ISSUES PERTINENT TO THIS MATTER IS REGARDING MR. MCKINNEY'S SIGNING AND AFFIXING HIS CALIFORNIA ENGINEER SEAL TO ELECTRICAL DRAWINGS FOR FIVE SEPARATE PROJECTS IN CALIFORNIA THAT HE WAS NOT LICENSED IN CALIFORNIA TO PERFORM ELECTRICAL ENGINEERING. THEREFORE, IT APPEARS THAT MR. MCKINNEY MAY NOT BE COMPETENT IN THE PRACTICE OF ELECTRICAL ENGINEERING AND THE SEALING OF ELECTRICAL DRAWINGS HE WAS NOT LICENSED TO PERFORM. ON JUNE 20, 2003, MR. MCKINNEY SIGNED A CONSENT ORDER. ON OCTOBER 9, 2003, THE BOARD ACCEPTED MR. MCKINNEY'S SIGNED CONSENT ORDER FOR A FORMAL REPRIMAND AND ASSESSED AN ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$2,400.00. ON NOVEMBER 6, 2003, MR. MCKINNEY PAID THE \$2,400.00 ADMINISTRATIVE PENALTY.

EXHIBIT K

JUN 24 2003

CONSENT ORDER

REC'D BY: 

IN THE MATTER OF

EARL F. MCKINNEY, P.E.

LICENSE NUMBER 41742 (MEC)

FILE NO.: D-1398

BEFORE THE TEXAS

BOARD OF

PROFESSIONAL ENGINEERS

On this day came to be considered by the Texas Board of Professional Engineers (Board), the matter of Mr. Earl F. McKinney, P.E., hereafter known as "Respondent", License Number 41742 (MEC), 3171 Roxburg Drive, Lexington, Kentucky 40503.

By letter dated January 27, 2003, the Board gave preliminary notice to Respondent of its intent to take disciplinary action against him as a result of an official complaint and subsequent inquiry. The inquiry produced evidence indicating that Respondent may have violated the Texas Engineering Practice Act (Act) and Board Rules. The proceeding may include the scheduling of a formal public hearing to consider the matters outlined below. The allegations against Respondent that would be presented by the Board to the State Office of Administrative Hearings if it were necessary to schedule a formal public hearing consist of the following:

- Respondent accepted and signed a Stipulated Settlement and Disciplinary Order that become effective August 23, 2002, in California, as a result of a California Board of Professional Engineers and Land Surveyor's inquiry that showed Respondent affixed his California mechanical engineer seal to five separate electrical engineering drawings for projects located in California. Respondent was not licensed in California as an Electrical Engineer. Therefore, Respondent's unlawful practice of electrical engineering in California was in violation of the laws regulating such practice in that jurisdiction and subjects him to disciplinary action in Texas, as provided for in BOARD RULE 131.156 (a).

Wishing to dispense with the need for further disciplinary action and to conclude the instant proceeding without further delay and expense, for the purpose of this proceeding only, Respondent does hereby enter in this Consent Order of his own free will; he has been advised of the right to employ an attorney of his own choosing; and he has been afforded all administrative remedies due him under the law. While Respondent neither admits nor denies the truth of the allegations previously set forth in this Order, he acknowledges and agrees that this Order will be considered by the Board as a disciplinary action for purposes of Board Rule 131.167. Therefore, in consideration of the foregoing and by his signature on this Order, Respondent does hereby waive his right to Notice of Hearing and to a hearing before the State Office of Administrative Hearings and/or Texas Board of Professional Engineers, and judicial review of this Order, all of which are rights granted him under the provisions of the Administrative Procedure Act, Sections 2001.001 - 2001.902 Texas Government Code, and/or Sections 2003.001 - 2003.046, Texas Government Code.

Respondent herein consents to the issuance of an Order for a Formal Reprimand and the assessment of an administrative penalty in the amount of \$2,400.00 to be paid to the Board within 30 days from the date the Order is accepted by the Board. Notwithstanding the provisions of any other Order accepted by the Board concerning Respondent, this Consent Order shall not be considered a final Order that shall entitle the Board to revoke any probation granted Respondent in a prior Order. Failure to pay the administrative penalty within the 30 day period will be considered to be a violation of the Order and will subject Respondent further disciplinary action against him by the Board.

WAIVER, CONSENT, and AGREEMENT dated this 20th day of June **TEXAS BOARD OF
PROFESSIONAL ENGINEERS**

Earl F. McKinney
Earl F. McKinney, P.E.
Respondent

JUN 24 2003

REC'D BY: GA

Peter L. Ostermiller
Peter L. Ostermiller, Esq.
Counsel for Respondent

TEXAS BOARD OF
PROFESSIONAL ENGINEERS

JUN 2

ORDER

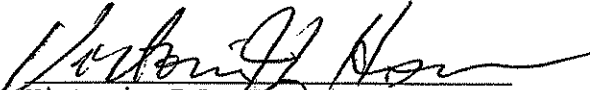
REC'D BY: 

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Professional Engineers does hereby issue a Formal Reprimand to Mr. Earl F. McKinney, P.E., License Number 41742(MEC), for conduct alleged in the foregoing Consent Order and the assessment of an administrative penalty in the amount of \$2,400.00. Notwithstanding the provisions of any other Order accepted by the Board concerning Respondent, this Consent Order shall not be considered a final Order that shall entitle the Board to revoke any probation granted Respondent in a prior Order. Failure to pay the administrative penalty within the 30 day period will be considered to be a violation of the Order and will subject Respondent to further disciplinary action against him by the Board.

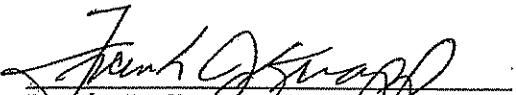
And it is so ordered.

SIGNED and DATED this 9th day of October, 2003.

FOR THE BOARD:

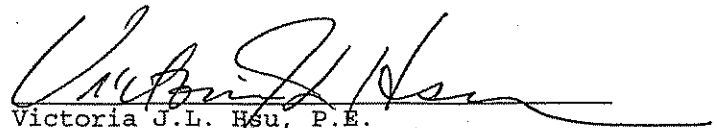

Victoria J.L. Hsu, P.E.
Executive Director

APPROVED AS TO FORM:


Frank J. Knapp, Jr.
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I have this 9th day of October, 2003, served copies of the foregoing Consent Order to all parties to this proceeding by Certified Mail No. 70010320600096852063.


Victoria J.L. Hsu, P.E.
Executive Director

LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 BROOKLINE AVENUE SUITE 121
BATON ROUGE, LOUISIANA 70809-1443
(225) 925-6291

LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD

IN THE MATTER OF:

EARL F. MC KINNEY, P.E.

RESPONDENT

Case No. V03-074E-190

CONSENT ORDER

The Louisiana Professional Engineering and Land Surveying Board [hereinafter the Board], by and through its Acting Executive Secretary, pursuant to authorization by the Board, and Earl F. McKinney, P.E. [hereinafter Respondent], hereby agree to the following:

Respondent is licensed in the State of Louisiana as a professional engineer in mechanical engineering, holding Louisiana License No. 18621. At all times material to the matters set forth in this Consent Order, Respondent's license has been in good standing with the Board.

The Board and Respondent stipulate that Respondent was disciplined by state licensing boards in California and Texas for matters that are also recognized as violations of the law in Louisiana. Contact with the California Board disclosed that it had taken disciplinary action against Respondent for the stamping and signing of plans at a time when Respondent's license was expired and engaging in the practice of electrical engineering without being licensed as an electrical engineer in California. A Decision and Order dated August 23, 2002 of the California Board stipulated that Respondent's California license be suspended for two (2) years, but that the suspension be stayed and Respondent's California license be placed on probation for two (2) years based upon 1) that Respondent obey all laws and regulations related to the practice of engineering and land surveying; 2) submit to the California Board such reports that they may require; 3) the period of probation shall be tolled during the time Respondent is practicing outside the state of California; 4) Respondent must successfully complete a course in professional ethics approved in advance by the California Board; 5) Respondent must successfully complete and pass the California Board's Laws and Rules Examination; 6) Respondent must submit a list to the California Board of all states other than California that Respondent is licensed

EXHIBIT L

in; and 7) Respondent must pay the California Board administrative costs of \$9,458.00. Contact with the Texas Board disclosed that it had taken disciplinary action against Respondent for the offering and/or practice of engineering disciplines in which Respondent had no formal education and/or experience and failed to show competency in those areas (structural and civil/foundation). In an agreed Board Order with the Texas Board of Professional Engineers dated September 4, 2002 Respondent agreed to 1) a three (3) year suspension of Respondent's Texas Engineering license with the entire period to be fully probated contingent upon Respondent paying an administrative penalty in the amount of \$3,500.00 and 2) that Respondent will not practice civil or structural engineering in Texas unless Respondent successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying.

Louisiana Revised Statute 37:698(A)(7) authorizes the Board to take action against a licensee of the Board who has been disciplined in another state for a matter recognized as a violation of the statutes or rules governing the practice of professional engineering or land surveying in Louisiana. Further, Louisiana Revised Statute 37:698(A) (6) to wit LAC TITLE LXI 2505 and Louisiana Revised Statute 37:698(A) (9) prohibit a licensee from practicing outside his area of competence or the use of a seal or stamp or engaging in any other act constituting the practice of engineering or land surveying at a time when a licensee's license has been expired for more than 90 days or at a time when he is in retired or in inactive status as a Board licensee.

To conclude this matter without further delay and expense and to protect the interests of the people of the State of Louisiana, Respondent and the Board hereby enter into a Consent Order, in which Respondent, of his own free will, consents to the issuance of an Order by the Board in which Respondent agrees to 1) a fine of two hundred dollars (\$200.00); 2) administrative costs of two hundred-fifty dollars (\$250.00); 3) a suspension of Respondent's license for a period of three (3) years with the suspension to be stayed and Respondent's license placed on probation for three (3) years; and 4) during the period of Respondent's probation he will submit any work in Louisiana performed by Respondent to the Board for prior review; and 5) the publishing of a summary of this matter in the Board's official journal, the Louisiana Engineer and Surveyor Journal, identifying Respondent by name.

Respondent has been advised of his right to be represented by counsel before the Board and/or to appear at any hearing personally or by counsel and to present witnesses and evidence in his own behalf,

and he hereby waives this right and his right to appeal, and he states affirmatively that he has been afforded all administrative remedies due him under the law.

Therefore, in consideration of the foregoing and by his signature on this Consent Order, Respondent does hereby waive his right to a hearing before the Board, to the presenting of evidence and witnesses in his behalf, to Findings of Fact and Conclusions of Law in this case, and to judicial review of this Consent Order.

Respondent hereby represents that he fully understands the meaning and intent of this Consent Order, including but not limited to its final and binding effect, that he has voluntarily entered into this Order and that no other promise or agreement of any kind has been made to or with him by any person or entity whatsoever to cause the execution of this instrument.

WHEREFORE, the Louisiana Professional Engineering and Land Surveying Board and Respondent agree that:

1. Respondent shall pay a fine of two hundred (\$200.00) dollars by certified check made payable to the Treasurer, State of Louisiana. The check will be submitted to the Board with this Consent Order; and
2. Respondent shall pay administrative costs of two hundred-fifty (\$250.00) dollars by certified check made payable to the Board. The check will be submitted to the Board with this Consent Order; and
3. Respondent's license will be suspended for a period of three (3) years with the suspension stayed and Respondent placed on probation for three (3) years; and
4. During the period of Respondent's probation, any work performed in Louisiana by Respondent will be submitted to the Board for prior review; and
5. A summary of this matter shall be printed in The Louisiana Engineer and Surveyor Journal, identifying Respondent by name; and
6. This Consent Order shall become effective upon its acceptance by and on behalf of the Board.

LOUISIANA PROFESSIONAL
ENGINEERING AND
LAND SURVEYING BOARD

DATED

4-20-04

BY:

Benjamin S. Harrison
Benjamin S. Harrison
Acting Executive Secretary

DATED Mar 10, 04

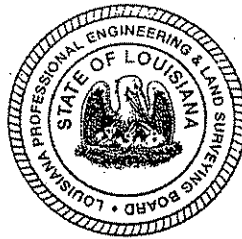
Earl F. McKinney
Earl F. McKinney, P.E.
Respondent

Witnesses to the signature of
Earl F. McKinney, P.E.

Connie Wymann

Dorothy A. Kanetkar

Bijan Sharakhani, P.E.
Chairman
William H. Miller, P.E., P.L.S.
Vice Chairman
Bob J. Green, P.E.
Secretary
Richard I. Durrett, P.E., P.L.S.
Treasurer
H. Glen Kent, Jr., P.L.S.
Executive Secretary



Timothy J. Allen, P.L.S.
Paul N. Hale, Jr., Ph.D., P.E.
Kerry M. Hawkins, P.E.
Kenneth L. McManis, Ph.D., P.E., P.
C. L. Jack Stelly, P.L.S.
Morgan M. Watson, P.E.
Joseph C. Wink Jr., P.E.

LOUISIANA PROFESSIONAL ENGINEERING AND LAND SURVEYING BOARD

October 1, 2003

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – REGULAR MAIL

Mr. Earl F. McKinney, P.E.
A&E Designers, Inc.
615 Delzan Place, Suite 100
Lexington, KY 40503

Re: In the Matter of Earl F. McKinney, P.E.
Case No. V03-074E-190

Dear Mr. McKinney:

This letter provides notice that the Board is considering preferring charges against you pursuant to the authority granted by Louisiana Revised Statutes 37:699 (A) (1). The charges involve a violation of Louisiana Revised Statute 37:698 (A)(7) which allows the board to take disciplinary action against a licensee who has been disciplined in another state for a matter also recognized as a violation in Louisiana.

A staff initiated investigation was opened on February 4, 2003. A review of the January 2003 NCEES Law Enforcement Exchange discloses that the California Board for Professional Engineers and Land Surveyors (California Board) and the Texas Board of Professional Engineers (Texas Board) had taken disciplinary action against you.

Contact with the California Board disclosed that it had taken disciplinary action against you for the stamping and signing of plans at a time when your license was expired and engaging in the practice of electrical engineering without being licensed as an electrical engineer in California. The California Board's disciplinary action was premised upon a Decision and Order dated August 23, 2002 wherein your license was suspended for two (2) years. However the suspension was stayed and your license was placed on probation for two (2) years based upon the following terms and conditions 1) obey all laws and regulations related to the practices of professional engineering and land surveying; 2) submit such special reports that the California Board may require; 3) the period of probation shall be tolled during the time that you are practicing outside the State of California; 4) you must successfully complete a course in professional ethics approved in advance by the California Board; 5) you must successfully complete and pass the California Board Laws and Rules examination; 6) you must submit a list to the California Board of all states other than California in which you are licensed to practice engineering; and 7) you must pay the California Board administrative costs of \$9,458.00.

Contact with the Texas Board disclosed that it had taken disciplinary action against you for the offering and/or practice of engineering in disciplines in which you had no formal education and/or experience and failed to show competency in those areas (structural and civil/foundation). The Texas Board's disciplinary action was premised upon a Agreed Board Order dated September 4, 2002 wherein you agreed to 1) a three (3) year suspension of your Texas engineer license with the entire period to be fully probated contingent upon paying an administrative penalty in the amount of \$3,500.00 and 2) that you will not practice civil or structural engineering in Texas unless you successfully pass the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying.

The above acts, if they had occurred in Louisiana would have constituted a violation of our licensure laws and rules. Louisiana Revised Statutes 37:698 (A)(6), to wit LAC Title 46:LXI§ 2505 (A) prohibits practice outside the area of a licensee's competence and 37:698 (A)(9) prohibits the use of a seal or stamp or engaging in any other act constituting the practice of engineering or land surveying at a time when a licensee's license has been expired for more than 90 days or at a time when he is in retired or inactive status as a Board licensee.

The potential charges against you that would be presented to the Board, if it becomes necessary to so proceed, is that you were disciplined in another state for a matter also recognized as a violation pursuant to Louisiana Revised Statute 37:698 (A)(6) and (7).

You are also advised that in addition to the right to have a formal hearing before the Board, you may contact this Office to schedule and informal conference at which you may present proof that you have not violated the above-cited statutes and rules. Alternatively, you may avoid the time, cost, and notoriety associated with a formal hearing or an informal conference by settling this matter by way of a Consent Order.

The following is a specific outline of the alternatives available to you regarding this matter.

- A) If within fifteen (15) days of receipt of this correspondence you fail to respond to this letter in any manner, or decline to schedule an informal conference, a recommendation will be made that the Board prefer charges and serve you with a Notice of Hearing and Charges.
- B) If you request the scheduling of an informal conference, the conference will be held in the Board's Office. The informal conference is conducted as follows:
 - (1) You will meet with an Informal Conference Review Committee composed of one Board member, the Executive Secretary, Board Legal Counsel and appropriate staff personnel. You may bring an attorney or some other representative.
 - (2) Board Staff will:
 - (a) Explain the purpose of the informal conference;
 - (b) Discuss the specific charges that would be presented to the Board if it becomes necessary to schedule a formal hearing;

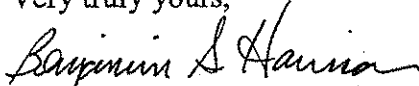
- (c) Present evidence in the Board's possession that could be introduced in a public hearing to substantiate the charges.
- (3) You and/or your attorney/representative will be given the opportunity to review and discuss the Board's evidence and to show that you have not violated the law.
- (4) The Informal Conference Review Committee will then make a recommendation to the Board.
 - (a) If it appears that a violation of the law did not occur, no further action is taken and the Board will dismiss the case;
 - (b) If proof that a violation did not occur cannot be shown, you will be presented with an opportunity to discuss informal disposition by means of a Consent Order. If an agreement on a Consent Order can be reached, the proposed Order will be submitted to the Board by the Committee. If accepted by the Board, the Consent Order will preclude further disciplinary action on the allegations covered in the Order.
 - (c) You may either accept or reject the Committee's proposed recommendation for a Consent Order:
 - (i) Should you accept the Committee recommendation, the Proposed Consent Order will be drafted, signed by you and a member of the Committee, and presented to the Board for the Board's approval or rejection. If the proposed Consent Order is entered by the Board, the matter is settled. If the proposed Consent Order is rejected by the Board, the matter is usually scheduled for a formal hearing.
 - (ii) Should you reject the recommendation of the Committee, a recommendation that the Board prefer charges against you and schedule a formal hearing will be made.
- (5) You should understand that:
 - (a) It is your choice to schedule an informal conference with the Informal Conference Review Committee. Although you are not legally required to schedule such a conference, failure to do so will result in a recommendation that the Board schedule a formal hearing to consider the charges against you.
 - (b) It is your choice to accept or reject the Committee's recommendation proposed at any informal conference;
 - (c) It is the decision of the Board whether to accept and enter into or reject any proposed Consent Order.

- (d) The Committee only has authority to recommend a proposed Consent Order.
- (e) You have the right to terminate an informal conference at any time and the right to appear in a formal hearing called for the purpose of adjudicating any violation of the law; and
- (f) The result of any informal disposition (Consent Order) or formal disposition (Board Order entered as a result of a hearing) is public information. Results of dispositions will appear in the official publication of the Board and be sent to the National Council of Examiners for Engineering and Surveying (NCEES).
- (g) As an alternative to a formal hearing or to an informal conference, you may wish to end these proceedings as soon as possible by means of an informal disposition authorized by La. R. S. 37:698(F) and endorsed as Board policy.

A probable-cause evaluation was made of your file, and a proposed Consent Order is enclosed for your consideration to sign and return to this Board. If you choose, you may accept the proposed Consent Order even though it did not result from an Informal Conference Review Committee meeting as described in paragraph (B)(4)(c)(i) above. Should you choose not to accept the proposed Consent Order, then you must respond to this letter as indicated in paragraph (A) above, by the deadline established in the following paragraph.

Should you desire to discuss this matter or wish to conclude this matter by a Consent Order, you may contact Mr. Robert E. Eddleman, Acting Director of Enforcement, by mail or telephone at (225) 925-6291 no later than fifteen (15) days following receipt of this letter. Should you fail to respond to this letter, a recommendation will be made to the Board that it prefer formal charges against you.

Very truly yours,



Benjamin S. Harrison
Acting Executive Secretary

REE/BSH:nld

Enclosures

cc: Board Attorney

**STATE OF VERMONT
BOARD OF PROFESSIONAL ENGINEERING**

In re: Earl F. McKinney
License No. 018-0004318

} Docket No. PE04-0804
}
}
}

Appearances:

Petitioner, State of Vermont: Robert H. Backus
Respondent: did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board of Professional Engineering held a hearing on the above matter on March 2, 2006 at the Heritage Building 81 River Street in Montpelier, Vermont. The Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1172, 1191 and 1192, the Administrative Rules of the Board of Professional Engineering, and the Rules of the Office of Professional Regulation.
2. The Respondent was sent notice of the Charges against him by certified mail on December 16, 2005 through his attorney in Kentucky.
3. The Office of Professional Regulation received a letter dated January 11, 2006 from Peter L. Ostermiller, an attorney practicing in Louisville, Kentucky acknowledging that he was representing Mr. McKinney, and that he had received the "Notice of Charges." Mr. Ostermiller made it clear that he was not representing Mr. McKinney in this matter. He asked for guidance on how Mr. McKinney might proceed in Vermont.
4. Mr. McKinney has never filed an answer to the Specification of Charges.
5. Notice of this Default Hearing was mailed to Mr. McKinney's lawyer, Mr. Ostermiller on January 30, 2006.
6. The return receipt for the notice of the Default Hearing was signed and returned to OPR.
7. Mr. McKinney has not responded to the Charges or the Notice of Default hearing.
8. Mr. McKinney is not represented by Vermont counsel in this matter.
9. Mr. Ostermiller's letter outlining the current procedural poster of Mr. McKinney's cases does not relieve Mr. McKinney of the responsibility of filing an answer or otherwise participating in this matter.

10. Since Mr. Ostermiller sent a copy of his January 11, 2006 letter to Mr. McKinney, and since notice to Mr. Ostermiller was received, the Board finds that Mr. McKinney had ample notice of the requirements to file and answer and of the hearing today.
11. Upon hearing the State's presentation and taking notice of its own file, the Board found the Respondent to be in default. The allegations contained in the State's specification of charges dated December 13, 2005 (copy attached) are therefore treated as the facts on which the Board's order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

The Respondent has received adequate notice of the charges against him as indicated by the Board's file and the State's presentation. Because the Respondent has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in the default hearing held pursuant to 3 V.S.A. §809(d), that the Respondent has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

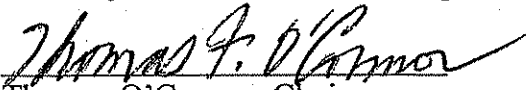
In accordance with the above findings of fact and conclusions of law, the license of the Respondent is hereby revoked, effective as of the date of the hearing.

Appeal Rights

This is a final administrative determination by the Vermont Board of Professional Engineering.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 26 Terrace Street, Montpelier, Vermont 05609-1101 within 30 days of the entry of this order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a. To request a stay of the Board's decision, please refer to the attached stay instructions.

By:  Date: March 2, 2006
Thomas O'Connor, Chair

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 3/8/06

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL ENGINEERING

IN RE:

EARL F. MCKINNEY
License No. 018-0004318

Docket No: PE04-0804

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Earl F. McKinney, P.E.:

Board Authority

1) The Vermont Board of Professional Engineering ("the Board") has authority, after finding unprofessional conduct, to issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of licenses whether or not a license has lapsed. 3 V.S.A. §§129, 129a and 814(d); and 26 V.S.A. §§1172, 1191 and 1192.

Statement of Facts

2) The Respondent, Earl F. McKinney, is licensed by the State of Vermont as a Professional Engineer under license number 018-0004318. This license was originally issued on or about March 21, 1983 and is currently set to expire on July 31, 2007.

3) Respondent is licensed as a professional engineer in a number of other states including Kentucky, California, Florida, Hawaii, Louisiana, Massachusetts, Maryland, Nevada, North Carolina, South Carolina, Tennessee, and Texas.

4) On or about July 22, 2004 the Office of Professional Regulation received an application for renewal of Respondent's Vermont professional engineering license dated July 12, 2004.

5) On his application, the Respondent answered "Yes" to the question "Has Vermont, any other state, territory or other jurisdiction restricted, suspended, revoked or taken any other disciplinary action against a license, certificate, or registration that you hold or held in any profession or occupation?"

6) On or about March 14, 1997 the Nevada Board of Registered Professional Engineers and Land Surveyors ("Nevada Board") suspended Respondent's license as a mechanical engineer in the state of Nevada for two years for stamping and signing plans outside of his discipline. The suspension was stayed and Respondent was placed on probation for two years with a number of accompanying conditions.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

7) Respondent's license has also been disciplined twice in Vermont as follows:

a. On or about May 23, 1991 this Board conditioned Respondent's license based on disciplinary action taken against Respondent's license by the Texas State Board of Registration for Professional Engineers ("Texas Board") for signing and sealing structural drawings which were not produced under his responsible supervision. (See Attachment A).

b. On or about May 4, 2001 this Board reprimanded Respondent's license based on disciplinary action taken against him by the states of South Carolina, North Carolina, and Hawaii. (See Attachment B).

8) Additionally, since the last action taken against Respondent's license by this Board on or about May 23, 2001, Respondent has received the following disciplinary actions from other states:

a. On or about July 11, 2002 the California Board for Professional Engineers and Land Surveyors ("California Board") suspended Respondent's license for two years for signing and stamping electrical engineering drawings without being licensed or registered to do so (incorporated by reference and attached as Attachment C). The suspension was stayed and Respondent was placed on probation for two years with a number of accompanying conditions.

b. On or about September 4, 2002 the Texas Board suspended Respondent's license for three years for affixing his Texas Engineer seal to structural and foundation plans without demonstrating to the Texas Board that he had received any formal education or experience in the field of civil/structural engineering (incorporated by reference and attached as Attachment D). The suspension was stayed and the Respondent was placed on probation for three years.

c. On or about July 11, 2002 the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors ("Kentucky Board") revoked Respondent's license pursuant to charges of making untruthful statements connected with practice as a professional engineer and signing and sealing plans inappropriately (incorporated by reference and attached as Attachment E). Respondent has filed numerous appeals to the revocation, all of which have been denied. Respondent currently has a petition pending before the Kentucky Supreme Court seeking review of his case.

9) Due to his conduct described in paragraphs 8(a)-(c), Respondent's license has been revoked, suspended, or put on probation in Maryland, Tennessee, Florida, Louisiana, and Massachusetts.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Charges

10) The acts, omissions and/or circumstances described above constitute unprofessional conduct pursuant to:

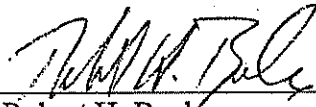
(i) 3 V.S.A. § 129a(a)(3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

Relief Requested

WHEREFORE, the Respondent's license should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 13th day of December 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: 
Robert H. Backus
State Prosecuting Attorney

pe.mckinney.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

UNDITIONED

570

STATE OF VERMONT

BOARD OF PROFESSIONAL ENGINEERING

IN RE EARL F. MCKINNEY, P.E.

CASE NO. PE02-0790

FINDINGS, CONCLUSIONS, AND ORDER

INTRODUCTION

This matter came on for hearing before Hearing Officer Sienna P. Walton on April 8, 1991 at the Office of the Secretary of State, 26 Terrace Street, Montpelier, Vermont. The Board had been presented with a Complaint dated February 26, 1991. A hearing was set for April 8, 1991. Mr. McKinney was notified of the hearing by certified mail and by telephone but did not attend and was not represented by counsel. Robert W. Gagnon, Senior Assistant Attorney General, appeared for the State.

Mr. Gagnon offered and the hearing officer admitted one exhibit:

Exhibit 1 - Certified copy of Final Order of Texas State Board of Registration for Professional Engineers, dated December 20, 1989, in the matter of Earl F. McKinney, P.E.

~~The hearing officer took official notice of a package of materials in the Board's files, consisting of a letter from Mr. McKinney to Rita C. Knapp, dated August 13, 1990, with enclosures.~~

After the evidence was closed, the hearing officer prepared A Proposal for Decision and delivered it to the Board and the parties. The parties were directed to file comments with the Board by May 15, 1991. No comments were filed other than a letter from ~~Mr. Gagnon stating that he did not object to the Proposal for~~ Decision as drafted. The Board then issued these Findings, Conclusions, and Order.

FINDINGS OF FACT

1. Earl F. McKinney is a Professional Engineer licensed by the Board. He holds license number 4318.
2. Mr. McKinney is a principal in the firm of Hamill & McKinney Architects & Engineers, Inc., based in Lexington, Kentucky. The firm specializes in hospital, commercial and retail projects, including restaurant facilities.
3. By Final Order dated December 20, 1989, the Texas State Board of Registration for Professional Engineers (Texas Board) suspended Mr. McKinney's engineering registration. The Texas Board "probated" the suspension for a term of three years, with any violations within the three-year term to result in full suspension and prohibition from practice.

ATTACHMENT A

4. The Texas Board found that Mr. McKinney signed and sealed structural design drawings for the Irving, Texas Animal Shelter which were not produced under his responsible supervision.

5. The Texas Board found that Mr. McKinney signed and sealed every sheet of the Wylie Force Main Sewer Project submitted to the City of Wylie, Texas when he actually participated in only a portion of the design work on the Project, and one of his employees performed the rest of the work.

6. The Texas Board found that Mr. McKinney signs and seals all documents prepared by his firm whether or not each line on a sheet is used under his direct supervision.

7. The Texas Board found that Mr. McKinney erroneously sealed and stamped outside his discipline on two occasions with respect to surveys and once with respect to architecture.

8. The Texas Board concluded that Mr. McKinney had violated seven of its Rules (four Board Rules and three Disciplinary Rules):

(1) Disciplinary Rule 3.1(ii) prohibiting an engineer from affixing his signature or seal to any engineering plan or document dealing with subject matter on which he is not qualified by education or experience to form a dependable judgment;

(2) Disciplinary Rule 6.1(IX) prohibiting an engineer from performing any acts, allowing any omissions or making any assertions or representations which are fraudulent, deceitful or misleading, or which in any manner whatsoever tend to create a misleading impression;

(3) Disciplinary Rule 6.2 providing that an engineer shall be personally and professionally responsible and accountable for the care, custody, control and use of his engineer's seal, his professional signature and identification;

(4) Professional Engineers Rule 131.138(2) prohibiting the sealing of work which was not performed by or under the responsible charge and supervision of the registrant ("plan stamping");

(5) Professional Engineers Rule 131.138(8) requiring all engineering registrants to place their normal signatures and date of execution in close proximity to their seal impressions and prohibiting use of signature reproductions in lieu of actual signatures;

(6) Professional Engineers Rule 131.151(7)(B)(i)(IV) providing that an engineer shall not fail to exercise reasonable care or diligence to prevent his partners, associates, and employees from engaging in conduct which, if done by him, would violate any provision of the Texas Engineering Practice Act, general board rule, or any disciplinary rule;

(7) Professional Engineers Rule 131.151(7)(B)(ii) providing that an engineer shall not engage in any conduct that discredits or tends to discredit the profession of engineering.

9. The findings of fact and conclusions of law in the Texas Board's Final Order dated December 20, 1989 reflect two days of hearings in which Mr. McKinney actively participated and in which he was represented by counsel.

CONCLUSIONS OF LAW

The Complaint charges Mr. McKinney with violation of 26 V.S.A. § 1191(b)(4) (failing to comply with the provisions of federal law or state statutes governing the practice of engineering) and 26 V.S.A. § 1191(c)(5) (signing or stamping a design or plan with which the engineer is not familiar, or negligently allowing use of the engineer's professional stamp on such a design or plan).

This Board may properly use the Texas Board's Final Order to decide whether to take disciplinary action against Mr. McKinney's Vermont license, because Mr. McKinney is collaterally estopped from contesting the facts underlying the Texas disciplinary action. See Halvalkar v. Board of Regents, 72 N.Y.2d 261, 268, 527 N.E.2d 1226 (1988). The doctrine of collateral estoppel prevents a party from relitigating issues necessarily and essentially determined in a prior action. Berisha v. Hardv, 144 Vt. 136, 138, 474 A.2d 91 (1984).

Based upon the findings and conclusions of the Texas Board, this Board therefore concludes that Mr. McKinney violated 26 V.S.A. §§ 1191(b)(4) and 1191(c)(5). For several projects located in Texas, he signed or stamped designs or plans with which he was not familiar (a violation in and of itself), and in so doing, he also failed to comply with provisions of both Texas rules and Vermont statutes governing the practice of engineering.

At the close of the April 8 hearing in this matter, Mr. Gagnon, representing the State, recommended that the Board impose the same sanction imposed by the Texas Board and for the same duration, to take effect retroactive to the December 20, 1989 date of the Texas Board's Final Order and to run concurrently with the Texas sanction.

The Board declines to impose a sanction retroactively. In addition, 26 V.S.A. § 1192 (discipline of licensees) does not contemplate "probating" a suspended license, as Texas law apparently permits. Three V.S.A. § 129(a)(4) authorizes the Board to limit or condition a license after a disciplinary hearing.

ORDER

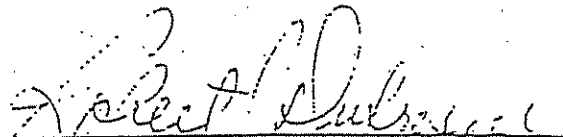
Accordingly, Mr. McKinney's license to practice professional engineering in the State of Vermont is hereby CONDITIONED until

December 20, 1992. Until that date, he is prohibited from practicing professional engineering in this State unless he practices under the direct supervision of a professional engineer licensed by this Board, who has an established office located in this State, and who has continuously practiced professional engineering at that location for at least ten years. The purpose of this condition is to ensure that, when practicing in Vermont, Mr. McKinney does not engage in the types of conduct which constituted violations of Texas rules and Vermont statutes, as determined above.

This order takes effect 30 days from the date shown below.

SIGNED at Springfield, Vermont this 23rd day
of May, 1991.

BOARD OF PROFESSIONAL ENGINEERING



Robert Dufresne, P.E.
Chairman

CERT: 1559-PE

STATE OF VERMONT
BOARD OF PROFESSIONAL ENGINEERS

In re:
Earl F. McKinney
License No. 18-4318

)
)
)
Docket No. PE02-0800

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through its Attorney General, William H. Sorrell, and Respondent Earl F. McKinney, who stipulate and agree as follows:

1. The Board of Professional Engineers has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed pursuant to 3 V.S.A. §§129, 129a, 26 V.S.A. §§1172, 1174 and 1191, the Board's and the Office of

Professional Regulation's Administrative Rules.

2. Respondent Earl F. McKinney is a professional engineer, holding license no. 18-4318, issued by the State of Vermont. By way of history, this license was

conditioned for approximately eighteen months, pursuant to a Findings,

Conclusions and Order dated on or about May 23, 1991, by the Vermont Board of Professional Engineering, (Docket No. PE02-0790, attached and incorporated).

Further, this had been triggered by a Final Order dated on or about December 20,

1989, by the Texas State Board of Registration for Professional Engineers (infra),

which suspended Respondent's license to practice in that state (the suspension being "probated") for three years.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

3. Upon information and belief, Respondent was or is licensed as a professional engineer in several states, including Texas, South Carolina, North Carolina and Hawaii.
4. Respondent admits that pursuant to a Consent Order dated on or about May 23, 1997, by the South Carolina Board of Registration for Professional Engineers and Land Surveyors (attached and incorporated), he was reprimanded and fined \$1000.00.
5. Respondent admits that pursuant to a Consent Order dated on or about December 3, 1999, by the North Carolina Board of Examiners For Engineers and Land Surveyors (Case No. V97-084, attached and incorporated), he was fined \$2000.00.
6. Respondent admits that pursuant to an Order dated on or about March 9, 2000, by the Hawaii Board of Professional Engineers, Architects, Surveyors and Landscape Architects (ENG 98-4-L, attached and incorporated), he was fined \$500.00.
7. Respondent admits that on or about July 5, 2000, he prepared, signed and/or filed a Renewal Notice for Professional Engineers, with the Vermont Secretary of State, Office of Professional Regulation. On the Renewal Notice, Respondent indicated "Yes" when asked, "Has any state or federal licensing authority restricted, suspended, revoked, or taken any other disciplinary action against a license, certificate, or registration that you hold or held in any profession or occupation?"

8. Respondent admits the conclusions of unprofessional conduct as set forth below in the Board's Order.
9. Respondent understands that the Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
11. Respondent waives notification and requests the Board to hear this matter at the next available meeting. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
12. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
13. Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
14. Respondent voluntarily waives his right to charges and a contested hearing before the Board.
15. Respondent agrees that the Board may set forth the order below.

ORDER

Based on the stipulation above it is **ORDERED AND ADJUDGED** as follows:

Office of the
ATTORNEY
GENERAL
89 State Street
Montpelier, VT
05609

A. By engaging in the conduct described in paragraphs above, including the incorporated South Carolina, North Carolina and Hawaii Orders, Respondent acted unprofessionally and in violation of 3 V.S.A. §129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

B. The Board, cognizant of the discipline previously imposed, further REPRIMANDS Respondent.

C. This Stipulation and Consent Order are a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

Dated: 3/26/01

By: 

William H. Ahlers
Assistant Attorney General

EARL F. MCKINNEY
RESPONDENT

Dated: March 23, 2001

By: 

Earl F. McKinney

PETER L. OSTERMILLER, ESQ.
RESPONDENT'S ATTORNEY

Office of the
ATTORNEY
GENERAL
19 State Street
Montpelier, VT
05609

Dated: Mar 23, 01

By: 

Peter L. Ostermiller, Esq.

ACCEPTED AND SO ORDERED:

Date: 5/3/01

Date of entry: 54-01

BOARD OF PROFESSIONAL
ENGINEERS

Paul B. L.
Chairperson

Office of the
ATTORNEY
GENERAL
19 State Street
Montpelier, VT
05609

1 BILL LOCKYER, Attorney General
of the State of California
2 TIMOTHY L. NEWLOVE, State Bar No. 73428

3 Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-3034
Facsimile: (619) 645-2061

7 Attorneys for Complainant

8
9 **BEFORE THE**
10 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 696-A

13 EARL F. MCKINNEY
2020 Liberty Road, Suite 105.
14 Lexington, California 40505

OAH No. L-2001080159

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Civil Engineer No. M 18456

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the

19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Complainant, Cindi Christenson, P.E., is the Executive Officer of the
22 Board for Professional Engineers and Land Surveyors ("Board"), and brought this administrative
23 proceeding solely in her official capacity. Complainant is represented in this matter by Bill
24 Lockyer, Attorney General of the State of California, by Timothy L. Newlove, Deputy Attorney
25 General.

26 2. Respondent EARL F. MCKINNEY is represented in this proceeding by
27 Peter L. Ostermiller, attorney at law, whose address is Kentucky Home Life Building,
28 Eighteenth Floor, 239 South Fifth Street, Louisville, Kentucky 40202.

1 3. On April 13, 1977, the Board issued Mechanical Engineer License
2 Number M 18456 to EARL F. McKINNEY ("Respondent"). This license was in full force and
3 effect at all times relevant to the charges brought herein and will expire on December 31, 2005.

4 JURISDICTION

5 4. On November 21, 2000, Complainant issued the Accusation in this matter,
6 Case No. 696-A, which is currently pending. On December 12, 2000, the Accusation and other
7 statutorily required documents were served upon Respondent. On January 24, 2001, Respondent
8 submitted a Notice of Defense, thereby contesting the charges set forth in the Accusation. On
9 January 3, 2002, a First Amended Accusation in the matter was issued and served upon
10 respondent and his counsel. A true and correct copy of the First Amended Accusation is
11 attached hereto as Exhibit A, and incorporated herein by this reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read and discussed with his counsel the nature of
14 the charges and allegations in the Accusation and First Amended Accusation and the effects of
15 this Stipulated Settlement and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the
17 right to a hearing on the charges and allegations in the Accusation and First Amended
18 Accusation; the right to be represented by counsel at Respondent's expense; the right to confront
19 and cross-examine the witnesses against Respondent; the right to present evidence and witnesses
20 on Respondent's behalf; the right to the issuance of subpoenas to compel the attendance of
21 witnesses and the production of documents; the right to reconsideration and court review of an
22 adverse decision; and all other rights accorded by the California Administrative Procedure Act
23 and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 CULPABILITY

27 8. Respondent hereby admits the charges set forth in paragraphs 8 through 12
28 of the First Amended Accusation, and agrees that his Mechanical Engineer License is subject to

1 discipline under the authority of Business and Professions Code § 141(a).

2 9. Respondent hereby admits the charges set forth in paragraphs 20 through
3 25 of the First Amended Accusation and agrees that his Mechanical Engineer License is subject
4 to discipline under the authority of Business and Professions Code 6775(h), for a violation of
5 Business and Professions Code § 6733.

6 10. Respondent admits that during 1994 and 1995, he signed and stamped
7 electrical engineering plans as a Mechanical Engineer in California, and that he was not legally
8 authorized to sign and stamp electrical engineering documents in California since he is not
9 licensed in California as an Electrical Engineer. In mitigation, Respondent states that, at the time
10 he signed and stamped the electrical engineering plans, he believed that such drawings were
11 incidental to the overall project, and, therefore, an Electrical Engineer's stamp was not required.

12 RESERVATION

13 11. The admissions made by Respondent herein are only for the purposes of
14 this proceeding, or any other proceeding based upon this case, such as a Petition for
15 Reinstatement, and shall not be admissible in any other criminal or civil proceeding.

16 CONTINGENCY

17 12. This Stipulation shall be subject to the approval of the Board. Respondent
18 understands and agrees that the Board's staff and counsel for Complainant may communicate
19 regarding this Stipulated Settlement, without notice to or participation by Respondent or his
20 counsel. If the Board fails to adopt this Stipulation as its Order, except for this paragraph, the
21 Stipulated Settlement and Disciplinary Order shall be of no force or effect, it shall be
22 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
23 further action in this matter by virtue of its consideration of this Stipulation.

24 13. The parties agree that facsimile copies of this Stipulated Settlement and
25 Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as
26 the original Stipulated Settlement and Disciplinary Order and signatures.

27 14. In consideration of the foregoing admissions and stipulations, the parties
28 agree that the Board shall, without further notice or formal proceeding, issue and enter the

1 following Disciplinary Order.

2
3 DISCIPLINARY ORDER

4 IT IS HEREBY ORDERED that the Mechanical Engineer License, No. M 18456,
5 issued to EARL F. McKINNEY, is suspended for two (2) years. However, the suspension is
6 stayed and the license shall be placed on probation to the Board for Professional Engineers and
7 Land Surveyors for two (2) years on the following terms and conditions:

8 1. OBEY ALL LAWS:

9 Respondent shall obey all laws and regulations related to the practices of
10 professional engineering and professional land surveying.

11 2. SUBMIT REPORTS:

12 Respondent shall submit such special reports as the Board may require.

13 3. TOLLING OF PROBATION:

14 The period of probation shall be tolled during the time that Respondent is
15 practicing exclusively outside the state of California. If, during the period of probation,
16 Respondent practices exclusively outside the state of California, he shall immediately notify the
17 Board in writing.

18 4. ETHICS COURSE:

19 Within eighteen (18) months of the effective date of the Decision in this matter,
20 Respondent shall successfully complete and pass a course in professional ethics. The course
21 shall be approved in advance by the Board or its designee.

22 5. BOARD EXAMINATION:

23 Within sixty (60) days of the effective date of the Decision in this matter,
24 Respondent shall successfully complete and pass the California Laws and Board Rules
25 examination, as administered by the Board.

26 6. OUT OF STATE REGISTRATIONS:

27 Within thirty (30) days of the effective date of the Decision in this matter,
28 Respondent shall provide the Board with a list of states other than California in which he is

1 licensed to practice engineering. In addition, within thirty (30) days of the effective date of the

2 Decision herein, and every six (6) months thereafter, Respondent shall provide information

3 concerning the status of each out-of-state engineering license. Such information may consist of
4 the report that Respondent submits to the National Council of Examiners for Engineering and
5 Surveying (NCEES).

6 7. COST REIMBURSEMENT:

7 Within eighteen (18) months from the effective date of the Decision in this case,
8 Respondent shall reimburse the Board in the amount of \$9,458 for the costs of investigation and
9 prosecution of the matter. Respondent may request and the Board shall permit payment of the
10 \$9,458 in installments.

11 8. VIOLATION OF PROBATION:

12 If Respondent violates the probationary conditions in any respect, the Board, after
13 giving Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the
14 disciplinary order which was stayed. If, during the period of probation, an Accusation or Petition
15 to Vacate Stay is filed against Respondent, or if the matter has been submitted to the Office of
16 the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all
17 matters are final, and the period of probation shall be extended until all matters are final.

18 9. COMPLETION OF PROBATION:

19 Upon successful completion of all of the probationary conditions and the
20 expiration of the period of probation, Respondent's license shall be unconditionally restored.

21 ///

22 ///

23 ///

24 ///

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1 ACCEPTANCE

2
3 I have carefully read this Stipulated Settlement and Disciplinary Order and have
4 fully discussed the terms and conditions and other matters contained therein with my attorney,
5 Peter Ostermiller. I understand the effect that this Stipulation will have on the Mechanical
6 Engineer License that I hold. I enter into this Stipulated Settlement voluntarily, knowingly, and
7 intelligently, and agree to be bound by the Disciplinary Order and Decision of the Board. I
8 further agree that a facsimile copy of this Stipulated Settlement and Disciplinary Order, including
9 facsimile copies of signatures, may be used with the same force and effect as the originals.

10
11 DATED: _____

12
13
14 EARL F. McKINNEY
15 Respondent

16
17
18
19
20 I have read and fully discussed with EARL F. McKINNEY, the terms and
21 conditions and other matters contained in this Stipulated Settlement and Disciplinary Order, and
22 approve its form and content.

23
24 DATED: _____

25
26
27 PETER L. OSTERMILLER
28 Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers and Land Surveyors in resolution of the Accusation, Case No. 696-A, against Respondent EARL F. McKINNEY.

DATED: _____

BILL LOCKYER, Attorney General
of the State of California

TIMOTHY L. NEWLOVE
Deputy Attorney General
Attorneys for Complainant

DOJ Docket Number: 03551110-SD2000AD0385
Stipulation 5/22/02
i:\all\newlove\McKinney Stipulation

AGREED BOARD ORDER

IN THE MATTER OF

EARL F. MCKINNEY P.E.

LICENSE NO. 41742 (MEC)

FILE: D-1034

BEFORE THE TEXAS

BOARD OF

PROFESSIONAL ENGINEERS

On this day came to be considered by the Texas Board of Professional Engineers (Board), the matter of Mr. Earl F. McKinney, P.E., hereafter known as "Respondent", License Number 41742(MEC), 3171 Roxbury Drive, Lexington, Kentucky 40503.

By letter dated October 24, 2000, the Board gave preliminary notice to Respondent of its intentions to take disciplinary action against him/her as a result of an official complaint and subsequent inquiry. The inquiry produced evidence indicating that Respondent may have violated the Texas Engineering Practice Act (Act) and Board Rules. The proceeding may include the scheduling of a formal public hearing to consider the matters outlined below. The potential charges against Respondent that would be presented by the Board to the State Office of Administrative Hearings if it were necessary to schedule a formal public hearing consist of the following:

- On December 20, 1989, the Board suspended your Texas license for a period of three years with the entire period to be probated for violation of the Act and board rules. A portion of this offense involved the sealing of plans for civil and structural work, a discipline where you lacked education and experience to perform adequately. Since December 20, 1989, Respondent has not provided the Board with any information showing expertise in the civil/structural discipline. However, on May 29, 1997, Respondent affixed his Texas engineer seal to the structural and foundation plans for the Intown Suites, 2601 South Cooper Street, Arlington, Texas. Since Respondent has not shown any formal education and experience in the field of structural and civil/foundation engineering since the December 1989 formal Board action, it appears that he is not competent in those areas of engineering. Board Rule 131.153 (a) and (b).
- By affixing his Texas engineer seal to the foundation and structural engineering plans for the Intown Suites, Arlington, Texas, Respondent represented to the local permitting agency and his client that he is competent in those engineering disciplines. This representation appears to be fraudulent, deceitful and misleading since Respondent has not shown competency in those engineering disciplines. Board Rule 131.156(a) (9) (amended as 131.155(b) (3) on 1-1-99).
- Respondent's practice of engineering in disciplines where he is not competent endangers the health, safety and welfare of the general public of Texas. Board Rule 131.151 (amended as 131.151(b) on 1-1-99).

An Informal Conference was held at the Board Office, 1917 IH 35 South, Austin, Texas, on April 18, 2001, with Respondent accompanied by his attorney, Mr. Peter L. Ostermiller, Esq., in conjunction with Mr. Govind Nadkarni, P.E., Board Member; Ms. Victoria J.L. Hsu, P.E., Executive Director; Mr. Frank J. Knapp, Jr., Assistant Attorney General; and Mr. Paul D. Cook, Director of Enforcement. By his signature on this Order, Respondent does hereby waive his right to Notice of Hearing before the State Office of Administrative Hearings

ATTACHMENT D

and/or the Texas Board of Professional Engineers, and judicial review of this Order, all of which are rights granted him under the provisions of the Administrative Procedure Act, Sections 2001.001-2001.902 Texas Government Code and/or Sections 2003.001-2003.046, Texas Government Code.

After discussion of the matters previously outlined in this Order relative to this inquiry, Respondent agreed to the entry of a Board Order dispensing with the need for further administrative action in this matter. By his signature on this Order, Respondent neither admits nor denies the truth of the matters previously set forth in this Order.

Respondent agrees and consents to the issuance of an Order for a three-year suspension of his Texas engineer license with the entire period to be fully probated contingent upon his payment of an administrative penalty in the amount of \$3,500 to the Board within 30 days from the date the Order is accepted by the Board. Respondent further agrees that he will not practice civil or structural engineering during the probated period unless during the said probation he successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying. The probation is also contingent upon Respondent not being found in violation of a separate offense of the Act or board rules during said period.

WAIVER, CONSENT and AGREEMENT dated this 4th day of September, 2002.

Earl F. McKinney

Earl F. McKinney, P.E.
Respondent

Peter L. Ostermiller

Peter L. Ostermiller, Esq.
Counsel for Respondent

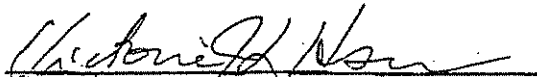
ORDER

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Professional Engineers does hereby issue a three-year suspension of the Texas engineer license held by Mr. Earl P. McKinney, P.E., License Number 41742, for conduct alleged in the foregoing Agreed Board Order with the entire period to be fully probated contingent upon his payment of an administrative penalty in the amount of \$3,500 to the Board within 30 days from the date the Order is accepted by the Board. Respondent further agrees that he will not practice civil or structural engineering during the probated period unless during the said probation he successfully passes the civil and/or structural engineering examination given by the National Council of Examiners for Engineering and Surveying. The probation is also contingent upon Respondent not being found in violation of a separate offense of the Act or board rules during said period.


And it is so ordered.

SIGNED and DATED this 5th day of September, 2002.

FOR THE BOARD:



Victoria J.L. Hsu, P.E.
Executive Director

APPROVED AS TO FORM:


Barbara H. Owens
General Counsel for the Board

CERTIFICATE OF SERVICE

I certify that I have this 11th day of September, 2002, served copies of the foregoing Agreed Board Order to all parties to this proceeding by Certified Mail No. 70010320000096821601.


Victoria J.L. Hsu, P.E.
Executive Director

COMMONWEALTH OF KENTUCKY
KENTUCKY STATE BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
ADMINISTRATIVE ACTION NO. 98-KBELS-0163

KENTUCKY STATE BOARD OF
LICENSURE FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS

vs.

EARL F. MCKINNEY, PE #5580

COMPLAINANT

RESPONDENT

* * * * *
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER
* * * * *

May 3, 2002

ATTACHMENT E

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COMMONWEALTH OF KENTUCKY
KENTUCKY STATE BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
ADMINISTRATIVE ACTION NO. 98-KBELS-0163

KENTUCKY STATE BOARD OF
LICENSURE FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS¹

COMPLAINANT

vs.

EARL F. MCKINNEY, PE #5580

RESPONDENT

* * * * *
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER
* * * * *

This matter came on for hearing on November 5, 6, and 7, 2001, in Frankfort, Kentucky. The Complainant, the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, was represented by attorney B. R. Salyer. The Respondent, Earl F. McKinney, was present at the hearing and was represented by attorneys Peter L. Ostermiller and Robert L. Abell.

The issue in this case is whether the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors may take disciplinary action against the Respondent, Earl F. McKinney, pursuant to KRS 322.180. After considering all of the evidence presented in this case, the Hearing Officer recommends that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors find Mr. McKinney

¹Prior to 1999, and at the time that this action was commenced, the Complainant's name was the Kentucky State Board of Registration for Professional Engineers and Land Surveyors. The Board's name was changed pursuant to KRS 322.010 (effective January 1, 1999) to the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors. The Hearing Officer has changed the Board's name in the caption of this case to reflect the statutory change in the Board's name.

guilty of violating KRS 322.180 and that the Board suspend Mr. McKinney's engineering license for a period of five (5) years, with special conditions regarding reinstatement, as described in more detail in Section IV below.

The Hearing Officer's specific findings of fact, conclusions of law, and recommended order are set forth in detail below.

I. The Evidence on the Record of this Case

Pursuant to KRS 13B.090(1), "findings of fact shall be based exclusively on the evidence on the record."

The evidence on the record of this case consists of: (1) the testimony of witnesses who testified at the hearing in this matter, or whose prior testimony was admitted into evidence at the hearing in this matter; and (2) the exhibits that were admitted into evidence at the hearing in this matter.

The Complainant called 3 witnesses to testify:

1. Bob Wooton [Tr., Vol. I, pp. 22-156; Vol. II, pp. 1-95]
2. Robert Fentress [Tr., Vol. II, pp. 96-112]
3. Earl F. McKinney [Tr., Vol. III, pp. 5-115]

The Respondent called 2 witnesses to testify:

1. Tony Smith [Tr., Vol. IV, pp. 30-122]
2. Earl F. McKinney [Tr., Vol. V, pp. 1-192]

One Joint Exhibit was admitted into evidence. Twenty-one (21) Complainant's Exhibits were admitted into evidence. Twenty (20) Respondent's Exhibits were admitted into evidence. Those exhibits were appropriately marked and admitted into evidence

and are part of the court reporter's record in this case.

Mr. McKinney has filed a Motion to Exclude certain of these exhibits from the record of this case. The Hearing Officer has denied that Motion by separate Order. The Hearing Officer's Order is incorporated herein and, for the Board's easy reference, is attached hereto as Attachment 1.

II. Findings of Fact

A. The Parties

1. The Complainant, the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors ("Board"), is charged, among other things, with the responsibility to administer the law concerning the licensure of professional engineers in the Commonwealth of Kentucky. [KRS 322.290] Prior to 1999, and at the time relevant to the matters raised in this proceeding, the Board was named the Kentucky State Board of Registration for Professional Engineers and Land Surveyors, and professional engineers were registered rather than licensed by the Board.

2. The Respondent, Earl F. McKinney, is registered or licensed as a professional engineer in the 48 contiguous states, as well as in Hawaii, the District of Columbia, and Puerto Rico. [Tr., Vol. III, p. 13]

3. Mr. McKinney has been registered or licensed as a professional engineer in the Commonwealth of Kentucky since April 21, 1964. [Tr., Vol. V, p. 155; Compl. Ex. 16, Tab 31] He was registered as a professional engineer in the Commonwealth of Kentucky at all times relevant to this matter.

4. Mr. McKinney is President of a company called A & E Designers, Inc.,

which was formed in 1990. He has been President of that company since 1999. Prior to being President of the company, he was the company's Chief Consultant. In both positions, Mr. McKinney has been in charge of the operation of the company. [Tr., Vol. V, pp. 12, 156; Resp. Ex. 5]

5. Although 98% or 99% of Mr. McKinney's work as a professional engineer at A & E Designers, Inc., is done on projects that are located outside of the Commonwealth of Kentucky [Tr., Vol. V, p. 101], the main office of A & E Designers, Inc., is located in Lexington, Kentucky.

B. Summary of Charges

6. The Board has charged Mr. McKinney with numerous violations of statutory and regulatory provisions. These charges fit into two categories: (1) allegations of making untruthful statements connected with practice as a professional engineer; and (2) allegations of signing and sealing plans inappropriately. The Hearing Officer has organized these charges as follows:

- Category 1: Allegations of Making Untruthful Statements Connected with Practice as a Professional Engineer
 - Charge 1: Assertions in NCEES Record
 - Charge 2: Statements Regarding States in which Registered as an Electrical Engineer
 - Charge 3: Statements Regarding the Extent of Practice in Nevada
 - Charge 4: Statements Regarding the Number of Engineers on Staff
- Category 2: Allegations of Signing and Sealing Plans Inappropriately

- Charge 5: Signing and Sealing Engineering Plans Without Review
- Charge 6: Signing Blank Vellum and Blue-Line Sheets
- Charge 7: Inappropriate Use of Logo
- Charge 8: Signing and Sealing Incomplete Plans for Holiday Inn Express
- Charge 9: Applying Engineering Seal to Survey Plat

[Statement of Facts and Charges, ¶¶ A, C, E, F, H, I, and J]²

C. Category 1 of Charges: Allegations of Making Untruthful Statements Connected with Practice as a Professional Engineer

7. Charges 1, 2, 3, and 4 deal with allegations that Mr. McKinney has made untruthful statements connected with his practice as a professional engineer. The Hearing Officer will address each of the charges in turn.

C.1. Charge 1: Assertions in NCEES Record

8. Charge 1 is that Mr. McKinney made untruthful assertions in the annual renewals of his National Counsel of Examiners for Engineering and Surveying (NCEES) record: (a) for 1988 and 1989, by indicating that he was not presently then under investigation by any state, when he was under investigation by the state of Texas; and (b) for 1990, 1991, 1994, and later years, by indicating that his license had not been

²These are all of the charges that currently are pending against Mr. McKinney. Other charges originally brought by the Board against Mr. McKinney have been voluntarily dismissed by the Board. Those charges that have been voluntarily dismissed by the Board are found in ¶¶ B, D, and G in the Statement of Facts and Charges.

The Hearing Officer notes that evidence was presented, and argument has been made, regarding certain matters that are not included in these charges. The Hearing Officer is addressing only the matters that are included in or related to these charges; the Hearing Officer deems all other matters irrelevant and therefore is not addressing them here.

suspended or revoked by a state and that he had not been publicly reprimanded by a state, when in fact his license had been suspended and he had been publicly reprimanded. [Statement of Facts and Charges, ¶ E]

9. The Hearing Officer will address each part of this charge in turn. First, however, the Hearing Officer will describe the NCEES record and the former disciplinary actions taken against Mr. McKinney that are relevant to these charges.

C.1.a. Background: NCEES Record

10. The National Counsel of Examiners for Engineering and Surveying (NCEES) has established a program by which an engineer can complete an NCEES record regarding the engineer's background, experience, and references. This record is then made available to state boards of engineering when the engineer authorizes transmittal of the record to the state boards. The NCEES record simplifies the process that an engineer must follow in applying for a license in more than one state. [Tr., Vol. II, pp. 102-103; Vol. III, p. 47; Vol. V, pp. 185-188]

11. An engineer who wishes to use the NCEES record completes an annual renewal form for the record. [Tr., Vol. III, p. 49]

12. Mr. McKinney completed NCEES annual renewal forms in at least 1988, 1989, 1990, 1991, 1994, 1995, 1996, 1997, and 1998. On these forms, Mr. McKinney answered questions regarding whether he was presently under investigation by a state and whether his license had been suspended or revoked by any state. [Compl. Exs. 16, 18]

13. Mr. McKinney's NCEES record was used in his applications for licenses in

California (1995-96 and 1998) and Massachusetts (1994). [Compl Exs. 16, 18]

C.1.b. Background: Former Disciplinary Actions Against Mr. McKinney

14. Mr. McKinney has been the subject of disciplinary actions in several states. The Hearing Officer will describe the various disciplinary actions that are relevant to these charges.

C.1.b.i. Texas (12-20-89)

15. On July 29, 1988, the Texas Board of Registration for Professional Engineers brought charges against Mr. McKinney regarding alleged violations of certain Board rules. The case was heard on July 12-13, 1989. The Hearing Examiner's Proposal for Decision was issued on July 21, 1989. On December 20, 1989, the Board issued its Final Order. [Compl. Ex. 17]

16. In its Final Order, the Texas Board of Registration for Professional Engineers disciplined Mr. McKinney for conduct that included the following:

- a. Placing his seal on drawings containing civil and structural engineering when he was not proficient in civil and structural engineering;
- b. Allowing his seal to appear on a survey although Mr. McKinney is not a licensed surveyor;
- c. Erroneously sealing and stamping outside his discipline on two occasions with respect to surveys and once with respect to architecture, claiming that the erroneous stamping was accidental;
- d. Allowing his seal to be used by others in sealing prototypical designs;
- e. Allowing his partner to seal and rubber stamp plans with Mr.

McKinney's engineer seal and signature replica;

- f. Allowing his seal and signature stamp to be in the custody and control of his partner, who is not a professional engineer;
- g. Using a signature stamp on plans rather than wet signing the plans because he did not know that he was required to personally sign the plans;
- h. Signing and sealing all documents prepared by firm whether each line on sheet is used under direct supervision or not;
- i. Representing to the Board in a letter that he had Texas licensed engineers on his staff who were proficient in civil and structural engineering, and that he had a qualified soils investigation analyst on his staff, but, during his testimony, not remembering who those staff members were and not wanting time to determine the answer.

[Compl. Ex. 17]

17. In its Final Order, the Texas Board of Registration for Professional Engineers determined that Mr. McKinney violated 7 rules of the Board, including the following 3 rules:

- a. Rule 3.1(ii): "The engineer shall not . . . affix his signature or seal to any engineering plan or document dealing with subject matter on which he is not qualified by education or experience to form a dependable judgment."
- b. Rule 6.1(IX): "The engineer shall not . . . perform any acts, allow any omissions or make any assertions or representations which are fraudulent, deceitful or misleading, or which in any manner whatsoever tend to create a misleading impression."

c. Rule 131.151(7)(B)(ii): An engineer shall not "engage in any conduct that discredits or tends to discredit the profession of engineering."

[Compl. Ex. 17]

18. The Texas Board of Registration for Professional Engineers disciplined Mr. McKinney for these violations by suspending his engineering registration for a period of 3 years, the suspension to be probated for a term of 3 years, "on condition that any violations of the Engineering Practice Act which have been found in this contested case, if committed again during the above term of years and subsequent to the rendition of a final order in this cause, will be grounds for a revocation of probation, at which time Respondent's license may be fully suspended, and the Respondent be prohibited from practicing Engineering in this State for the full period initially assessed." [Comp. Ex. 17]

C.1.b.ii. Disciplinary Actions in Other States as a Result of Texas Action

19. Several other states took disciplinary action against Mr. McKinney because of the disciplinary action that had been taken against Mr. McKinney by the Texas Board of Registration for Professional Engineers: Colorado, New York, Nevada, Wisconsin, Louisiana, and Delaware. The Hearing Officer will discuss each of the states in turn.

20. **Colorado (12-31-90):** The Colorado State Board of Registration for Professional Engineers and Professional Land Surveyors found that, at various times between 1981 and 1988 in Texas, Mr. McKinney signed and sealed certain documents despite the fact that the work stamped was not done under Mr. McKinney's complete direction and control and/or was outside the scope of Mr. McKinney's competence; such conduct would provide grounds for disciplinary action against Mr. McKinney pursuant to

Colorado law. The Colorado Board admonished Mr. McKinney to discontinue such practices, and warned Mr. McKinney that repetition of such conduct may lead to the imposition of more disciplinary sanctions. [Compl. Ex. 17]

21. New York (1-14-91): New York suspended Mr. McKinney's license to practice as a professional engineer in the State of New York for 2 years, with the suspension stayed, and with Mr. McKinney placed on probation for a period of 2 years under specific terms. [Compl. Ex. 17]

22. Nevada (3-29-91): The Nevada Board of Registered Professional Engineers and Land Surveyors disciplined Mr. McKinney based upon the discipline imposed upon Mr. McKinney by the Texas State Board of Registration of Professional Engineers. There is no evidence in the record, however, about the type of discipline that the Nevada Board imposed upon Mr. McKinney. [Compl. Ex. 17]

23. Wisconsin (11-15-91): Wisconsin suspended Mr. McKinney's license to practice professional engineering in Wisconsin for a term to coincide with his suspension in the state of Texas, with the imposition of the suspension in Wisconsin stayed on the condition that the Respondent comply with the conditions of his probation in Texas. [Compl. Ex. 17]

24. Louisiana (11-91): The Louisiana State Board of Registration for Professional Engineers and Land Surveyors and Mr. McKinney entered into a Consent Order in November 1991. The terms of the Consent Order were, in pertinent part:

1. [Mr. McKinney's] registration as a professional engineer in Louisiana is suspended until December 20, 1992, or in the event this Consent Order does not become effective until after December 20, 1991, the suspension period shall be for

one year from the effective date of the Consent Order. during this time period [Mr. McKinney] will not practice or offer to practice engineering in the State of Louisiana; unless under the direct supervision and complete control of a Louisiana Registered Professional Engineer who must seal any engineering work as the responsible professional.

2. [Mr. McKinney's] engineering registration will be reinstated at the end of the suspension period, providing there has been no further disciplinary action as a result of violations of the engineering or land surveying registration laws or rules in Louisiana, or in any other state if such violation(s) were recognized by this Board as being grounds for disciplinary action in Louisiana at the time such occurred. Any such further disciplinary action by other states shall be grounds for the Louisiana State Board of Registration for Professional Engineers and Land Surveyors to file formal charges and call for a disciplinary hearing, and to take any disciplinary action permitted under Louisiana law.

[Compl. Ex. 17]

25. Delaware: The Delaware Board of Engineers accepted the findings of the Texas Board and suspended Mr. McKinney's license until December, 1992 (3 years).

[Compl. Ex. 17]

C.1.b.iii. Nevada (3-14-97)

26. On March 14, 1997, the Nevada Board of Registered Professional Engineers and Land Surveyors issued a Decision and Order in which the Board found that Mr. McKinney had stamped and signed plans that involved electrical engineering when Mr. McKinney was not licensed to practice electrical engineering in Nevada. The Board suspended Mr. McKinney's license to practice mechanical engineering in Nevada for two years and stayed that suspension; the Board placed Mr. McKinney on probation for two years and required Mr. McKinney to meet certain terms of probation; the Board

ordered Mr. McKinney to pay a fine of \$3,500. [Compl. Ex. 17]

C.1.c. Charge 1(a): Mr. McKinney's Representations Regarding Being Under Investigation

27. Charge 1(a) is that Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1988 and 1989 by indicating that he was not presently then under investigation by any state, when he knew that he was under investigation by the state of Texas. [Statement of Facts and Charges, ¶ E]

28. Mr. McKinney completed an NCEES 1988 annual renewal form on March 9, 1988, while Mr. McKinney was in Kentucky. On that form, Mr. McKinney answered "no" to the question, "Are you presently under investigation by a state?" [Compl. Ex. 18]

29. On that date, however, Mr. McKinney knew that he was under investigation by the state of Texas, which is evident by the fact that, on March 10, 1987, Mr. McKinney had corresponded with the Texas Board of Registration for Professional Engineers regarding the Texas Board's investigation of Mr. McKinney's engineering activities in Texas. [Compl. Ex. 17]

30. Accordingly, the Hearing Officer finds that Mr. McKinney made an untruthful assertion in his answer to that question on the NCEES 1988 annual renewal form.

31. Mr. McKinney completed an NCEES 1989 annual renewal form on March 6, 1989, while Mr. McKinney was in Kentucky. On that form, Mr. McKinney answered "no" to the question, "Are you presently under investigation by a state?" [Compl. Ex. 18]

32. On that date, however, Mr. McKinney knew that he was under investigation by the state of Texas, which is evident by: (a) the fact that, on March 10,

1987, Mr. McKinney had corresponded with the Texas Board of Registration for Professional Engineers regarding the Texas Board's investigation of Mr. McKinney's engineering activities in Texas; and (b) the fact that charges had been issued against Mr. McKinney by the Texas Board of Registration for Professional Engineers on July 29, 1988. (Those charges were pending against Mr. McKinney until December 20, 1989, when the Texas Board issued its Final Order.) [Compl. Ex. 17]

33. Accordingly, the Hearing Officer finds that Mr. McKinney made an untruthful assertion in his answer to that question on the 1989 NCEES annual renewal form.

34. In sum, the Hearing Officer finds that Mr. McKinney is guilty of the charge of making untruthful assertions in the NCEES annual renewal forms for 1988 and 1989, by indicating that he was not presently then under investigation by any state, when he knew that he was under investigation by the state of Texas.

C.1.d. Charge 1(b): Mr. McKinney's Representations Regarding Suspension of License

35. Charge 1(b) is that Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1990, 1991, 1994, and later years, by indicating that his license had not been suspended or revoked by a state and that he had not been publicly reprimanded by a state, when in fact his license had been suspended and he had been publicly reprimanded. [Statement of Facts and Charges, ¶ E]

36. Mr. McKinney completed an NCEES 1990 annual renewal form on March 12, 1990, while Mr. McKinney was in Kentucky. On that form, Mr. McKinney answered "no" to the question, "Has your license been suspended or revoked by a state?" [Compl.

Ex. 16, Tab 28]

37. On that date, however, Mr. McKinney knew that his license was currently under probated suspension in Texas (12-20-89). [Compl. Ex. 17]

38. Accordingly, the Hearing Officer finds that Mr. McKinney made an untruthful assertion in his answer to that question on the NCEES 1990 annual renewal form.

39. Mr. McKinney completed an NCEES 1991 annual renewal form on March 12, 1991, while Mr. McKinney was in Kentucky. On that form, Mr. McKinney answered "no" to the question, "Has your license been suspended or revoked by a state?" [Compl. Ex. 16, Tab 27]

40. On that date, however, Mr. McKinney knew that his license was currently under probated suspension in Texas (12-20-89) and New York (1-14-91) and under full suspension in Delaware. [Comp. Ex. 17]

41. Accordingly, the Hearing Officer finds that Mr. McKinney made an untruthful assertion in his answer to that question on the NCEES 1991 annual renewal form.

42. Mr. McKinney completed an NCEES 1994 annual renewal form on May 31, 1994, an NCEES 1995 annual renewal form on November 13, 1995, and an NCEES 1996 annual renewal form on February 29, 1996, while Mr. McKinney was in Kentucky. On each of those forms, Mr. McKinney answered "no" to the question, "Has your license been suspended or revoked by a state?" [Compl. Ex. 16, Tabs 26, 25, 24]

43. By all of those dates, however, Mr. McKinney knew that his license had

been under probated suspension in Texas (12-20-89), New York (1-14-91), and Wisconsin (11-15-91); in addition, Mr. McKinney knew that his license had been under full suspension in Delaware and Louisiana (11-91). [Compl. Ex. 17]

44. Accordingly, the Hearing Officer finds that Mr. McKinney made untruthful assertions in his answers to that question on the NCEES 1994, 1995, and 1996 annual renewal forms.

45. Mr. McKinney completed an NCEES 1997 annual renewal form on May 27, 1997, and an NCEES 1998 annual renewal form on August 19, 1998, while Mr. McKinney was in Kentucky. On those forms, Mr. McKinney answered "no" to the question, "Has your license been suspended or revoked by a jurisdiction?" [Compl. Ex. 16, Tabs 22, 25]

46. By those dates, however, Mr. McKinney knew that his license had been disciplined in several states, as noted above. In addition, on both of those dates, Mr. McKinney knew that his license was currently under probated suspension in Nevada (3-14-97). [Compl. Ex. 17]

47. Accordingly, the Hearing Officer finds that Mr. McKinney made untruthful assertions in his answer to that question on the NCEES 1997 and 1998 annual renewal forms.

48. Mr. McKinney is also charged with making untruthful assertions in the NCEES annual renewal forms by indicating that he had not been publicly reprimanded by a state. There is no evidence in the record that Mr. McKinney ever made such assertions in any NCEES annual renewal form.

49. In sum, the Hearing Officer finds that Mr. McKinney is guilty of the charge of making untruthful assertions in the NCEES annual renewal forms for 1990, 1991, 1994, 1995, 1996, 1997, and 1998, by indicating that his license had not been suspended or revoked by a state, when in fact his license had been suspended by several states. The Hearing Officer also finds that Mr. McKinney is not guilty of the charge of making untruthful assertions in the NCEES annual renewal forms by indicating that he had not been publicly reprimanded by a state.

C.1.d.i. Defenses to Charge 1(b)

50. Mr. McKinney asserts three defenses to this charge, which the Hearing Officer will address in turn.

51. Mr. McKinney's first defense to this charge is that he thought that, once the time periods for the suspensions were over, he was under no obligation to report the suspensions on the NCEES annual renewal forms. The main problem with this defense is that some of the suspensions were in effect at the time that Mr. McKinney completed several of these forms. Specifically, on the dates on which Mr. McKinney completed the 1990, 1991, 1997, and 1998 annual renewal forms, the suspensions were still in effect as follows:

- 1990 form: current probated suspension in Texas
- 1991 form: current probated suspension in Texas and New York; current full suspension in Delaware
- 1997 form: current probated suspension in Nevada
- 1998 form: current probated suspension in Nevada.

If Mr. McKinney had reported these suspensions at the time that the suspensions

were in effect, the Hearing Officer would agree that Mr. McKinney's interpretation of this question would be a reasonable interpretation of the question, and that he would not be required to continue to report these suspensions on the renewal forms after the terms of the suspensions were completed. On the other hand, since Mr. McKinney never reported these suspensions on the NCEES annual renewal forms, even when the suspensions were in effect, the Hearing Officer does not accept Mr. McKinney's interpretation of this question as a reasonable, good faith interpretation of the question, even for those years in which the suspensions were no longer in effect.

For these reasons, the Hearing Officer does not accept this defense.

52. Mr. McKinney's second defense to this charge is, "Since the Texas Board suspension had been probated, without conditions, and Mr. McKinney's engineering license was always in effect, Mr. McKinney did not believe that such resolutions were administrative actions to be reported on a question requesting actual suspensions."

[Respondent's Post-Hearing Response Brief, pp. 10-11]

The first problem with this defense is that, although the Respondent asserts that Mr. McKinney testified to the belief that is asserted in this defense, the Respondent cites no reference in the record to such testimony and the Hearing Officer can find none.

Without evidence in the record to support this assertion, the defense must fail.

The second problem with this defense is that, even if there were evidence in the record to support such a belief by Mr. McKinney, not all of the suspensions of Mr. McKinney's licenses at issue in this charge were probated suspensions. Specifically, the suspensions in Delaware and Louisiana were full suspensions of Mr. McKinney's

licenses; still, Mr. McKinney never reported those suspensions on the NCEES annual renewal forms.

If Mr. McKinney had reported those full suspensions on his NCEES renewal forms, the Hearing Officer would agree that Mr. McKinney's interpretation of this question could be a reasonable interpretation of the question, and that it could have been reasonable for Mr. McKinney not to report the probated suspensions on the renewal forms. On the other hand, since Mr. McKinney never reported even the full suspensions on the NCEES annual renewal forms, the Hearing Officer does not accept Mr. McKinney's interpretation of this question as a reasonable, good faith interpretation of the question, even for those suspensions that were not full suspensions.

For these reasons, the Hearing Officer does not accept this defense.

53. Mr. McKinney's third defense to this charge appears to be that all disciplinary actions that were taken against him by state boards were a matter of public record and that those records were available to anyone who wanted to make contact with the boards to obtain that information. [Tr., Vol. V, pp. 79-80] The Hearing Officer agrees with Mr. McKinney that the disciplinary actions taken against him were a matter of public record, and that such public record generally is available to anyone who wishes to obtain it. The existence of such records, however, does not alter the fact that Mr. McKinney made untruthful assertions in several NCEES annual renewal forms; the fact that someone could determine, upon investigation, that Mr. McKinney had made those untruthful statements does not change the untruthful statements into truthful statements.

For that reason, the Hearing Officer does not accept this defense.

C.1.e. Conclusion Regarding Charge 1

54. In sum, the Hearing Officer finds that Mr. McKinney is guilty of the charge of making untruthful assertions in the annual renewals of his NCEES record: (a) for 1988 and 1989, by indicating that he was not presently then under investigation by any state, when he was under investigation by the state of Texas; and (b) for 1990, 1991, 1994, 1995, 1996, 1997, and 1998, by indicating that his license had not been suspended by a state when in fact his license had been suspended.

C.2. Charge 2: Statements Regarding States in which Registered as an Electrical Engineer

55. Charge 2 is that Mr. McKinney made untruthful statements regarding the number of states in which he is registered as an electrical engineer: (a) in testifying before the Nevada Board of Professional Engineers; and (b) in applying for a license as an electrical engineer in California. [Statement of Facts and Charges, ¶ A]

56. In order to understand this charge, it is important to understand the ways in which states register professional engineers and the ways in which Mr. McKinney is registered as an engineer in the various states. Accordingly, before the Hearing Officer addresses each part of this charge, the Hearing Officer will discuss these background items.

C.2.a. Background: Methods of Registering Professional Engineers

57. There are two ways in which states register professional engineers. In the first way, states register individuals generally as professional engineers; once registered in such a state, the professional engineer is permitted to practice in any area of engineering

in which the professional engineer has gained the necessary competence. States that register professional engineers in this manner are called "PE" states. In the second way of registering professional engineers, states register professional engineers in specific engineering disciplines, such as electrical engineering and mechanical engineering; in these states, professional engineers are only permitted to practice engineering in the specific discipline for which the individual is registered. States that register professional engineers in this manner are called "discipline" states. [Tr., Vol. II, p. 101; Vol. III, pp. 6-8]

58. Kentucky is a "PE" state. [Tr., Vol. II, p. 101]

59. The majority of states are "PE" states. The "discipline" states include Arizona, California, Massachusetts, and Nevada. The other states that are at issue in this case are all "PE" states: Ohio, Minnesota, Missouri, Montana, Nebraska, New Mexico,³ Pennsylvania, and Wisconsin. [See ORC 4733.01 et seq. (Ohio); Minn. Stat. 326.02 et seq. (Minnesota); R.S.Mo. 327.011 et seq. (Missouri); Mont. Code Anno., § 148 et seq. (Montana); R.R.S. Neb. 81-3401 et seq. (Nebraska); NMSA 61-23-1 et seq. (New Mexico); 63 P.S. § 148 et seq. (Pennsylvania); Wis. Stat. § 443.01 et seq. (Wisconsin).]

C.2.b. Background: Mr. McKinney's Registrations in Various States

60. At the times relevant to this matter, Mr. McKinney was registered as a professional engineer in the "discipline" states as follows: Mr. McKinney was registered in Massachusetts as an electrical engineer beginning on June 30, 1994. Mr. McKinney

³While New Mexico licenses engineers only as "professional engineers," it also qualifies engineers in specific branches of engineering.

was registered in Arizona as both an electrical and a mechanical engineer beginning on February 6, 1996. Mr. McKinney was registered in California as a mechanical engineer. Mr. McKinney was registered in Nevada as a mechanical engineer. [Tr., Vol. III, p. 9; Compl. Ex. 16, Tab 31]

61. Mr. McKinney knows the difference between a "PE" state and a "discipline" state [Tr., Vol. III pp. 6-8], as indicated in his testimony on January 17, 1997, at a Nevada hearing:

Q: You're aware that Nevada is a discipline state and that we register here by discipline, correct?

Mr. McKinney: Yes, sir.

Q: And you are not allowed to practice outside of your discipline in the State of Nevada. Do you understand that?

Mr. McKinney: Yes, I understand. . . .

. . . Q: The reason I ask this question, I'm being very candid, . . . I have some personal concerns based upon what I've heard here today, whether you fully understand the significance of the actual stamping in a discipline state, . . . but in a discipline state we are very specific to what you can and cannot do, and I have not been convinced today that you yet understand the difference.

Mr. McKinney: I do understand the difference. I understand that you got a separate discipline for a mechanical engineer, electrical engineer, a structural engineer, and so forth. And I've admitted I made an error, and not being correct in signing the one electrical sheet that . . . but I am very much aware of it because I understand, because my income is determined by keeping my registrations and working with these various clients. So I understand the liability and understand the consequences. So I am very cognizant of what the responsibilities and requirements are.

[Compl Ex. 15, pp. 4, 36-37]

62. Mr. McKinney is not certain regarding the nature of his registrations in the various states. This is true even though Mr. McKinney testified at a Nevada hearing on January 17, 1997, that he was taking steps to clear up his confusion on this question:

Q: Why don't you tell the members of the board what you have done since this situation unfolded, and what you will do from this point forward, to be absolutely sure that in Nevada, as in the other discipline states, you will not slip up, you will not stamp something that says electrical or whatever, unless you are duly registered in that field.

Mr. McKinney: Well, I have a large chart behind my desk with all the states in big letters, and which field I'm registered in. And each project we get in, we're double checking to make absolutely sure that I don't sign or seal any in any states or disciplines that I'm not registered or required by that state to be registered. So we double check it - I have a person in our print room that checks it and will even call the city, state or municipality to triple check it. To make sure what they'll accept and what they won't. So that's the method of the control of determining what's acceptable and what's not at this stage.

[Comp. Ex. 15, pp. 34-35]

63. In putting this chart together, Mr. McKinney did not check his own files to see the registrations from each state, to determine the manner of his registrations in the various states. Rather, he or his staff made calls to the various state building departments to determine what was allowed and what was not allowed. [Tr., Vol. III, pp. 28-29]

64. Despite the assurance given by Mr. McKinney in January 1997, Mr. McKinney still does not know whether Montana, Nebraska, and Wisconsin are "PE" or "discipline" states. [Tr., Vol. III, pp. 14, 14-15] While Mr. McKinney now correctly believes that Missouri is a "PE" state and not a "discipline" state [Tr., Vol. III, p. 14], Mr. McKinney also believes that Minnesota is a "discipline" state [Tr., Vol. III, p. 10], when in

fact Minnesota is a "PE" state. While Mr. McKinney now knows that he does not have a license as an electrical engineer in Ohio [Tr., Vol. III, p. 15], he does not know whether he is licensed as an electrical engineer in Missouri, Montana, Nebraska, and Wisconsin. [Tr., Vol. III, pp. 15-16]

C.2.c. Charge 2(a): Statements at a Nevada Hearing

65. Charge 2(a) is that Mr. McKinney, in testimony before the Nevada Board of Professional Engineers and Land Surveyors, made untruthful statements regarding the number of states in which he was registered as an electrical engineer. [Statement of Facts and Charges, ¶ A]

66. In January 1996, a Complaint was filed before the Nevada Board of Professional Engineers and Land Surveyors alleging that Mr. McKinney stamped drawings in Nevada involving electrical engineering, which was outside the discipline of mechanical engineering for which he was registered in Nevada. [Compl. Ex. 15]

67. On January 17, 1997, a hearing was held before the Nevada Board of Professional Engineers and Land Surveyors in Reno, Nevada, regarding that Complaint. Mr. McKinney testified at that hearing. [Compl. Ex. 15]

68. During his testimony at that Nevada hearing, Mr. McKinney testified regarding the status of his registrations as a mechanical and electrical engineer as follows:

Q: Are you registered as a mechanical engineer in other jurisdictions?

Mr. McKinney: I'm registered in various ways. In Massachusetts I'm registered as an engineer, mechanical engineer, electrical engineer, and HVAC engineer. In

Arizona I'm registered as a mechanical engineer and an electrical engineer. In Minnesota I'm registered dual registration - mechanical and electrical. And I believe I have about 13 states I'm registered in as electrical engineer.

Q: You believe there are 13 states in which you are registered as a mechanical?

Mr. McKinney: No, as an electrical engineer.

Q: Do you recall in how many jurisdictions you are registered as a mechanical engineer?

Mr. McKinney: Well, the majority of the states don't have that discipline registration. The majority of the states you can practice engineering according to your education or experience. So there are only a few states, let's see, Nevada, Arizona, California and Minnesota and Massachusetts are the only states to my knowledge in the nation that differentiate if you're an engineer or registered engineer you can practice, again, whatever your education and experience dictates.

[Compl. Ex. 15, pp. 3-4]

69. Thus, although Mr. McKinney acknowledged that he knew of only 5 "discipline" states, he also generally asserted that he believed that he was registered as an electrical engineer in about 13 states. In addition to this general assertion, Mr. McKinney also asserted that he was registered as an electrical engineer in 3 specific states: Massachusetts, Arizona, and Minnesota.

70. In fact, at the time of his testimony at the Nevada hearing, Mr. McKinney was registered as an electrical engineer in only 2 states: Arizona and Massachusetts. (The Hearing Officer notes that Minnesota, for which Mr. McKinney also specifically claimed registration as an electrical engineer, is a "PE," rather than a "discipline," state, and so Mr. McKinney could not have been registered as an electrical engineer in

Minnesota.)

71. Therefore, the Hearing Officer finds that Mr. McKinney's statement that he believed that he was registered as an electrical engineer in about 13 states was an untruthful statement.

C.2.d. Charge 2(b): Statements in Application for Licensure in California

72. Charge 2(b) is that Mr. McKinney, in applying for a license as an electrical engineer in California, made untruthful statements regarding the number of states in which he was licensed as an electrical engineer. [Statement of Facts and Charges, ¶ A]

73. On September 20, 1995, Mr. McKinney signed an Application for Registration as a Professional Engineer, which he then submitted to the Board of Registration for Professional Engineers and Land Surveyors in California. As part of this application, Mr. McKinney stated:

Earl F. McKinney is licensed in 49 states, the District of Columbia and Puerto Rico. In California, registered as a Mechanical Engineer license #18456. In addition, Earl is currently a licensed Electrical Engineer in Missouri, Montana, Nebraska, Ohio and Wisconsin.

[Compl. Ex. 16, Tab 7] Mr. McKinney signed this Application in Kentucky.

74. On January 4, 1996, the Assistant Executive Officer of the California Board of Registration for Professional Engineers and Land Surveyors wrote to Mr. McKinney, stating:

Under California law you cannot use your Mechanical Engineering examination to waive the Electrical Engineering examination. . . . You have two options regarding your Electrical Engineering application. 1) You can withdraw your application as filed in error. . . . 2) You can be evaluated to test for the Electrical Engineering Examination. . . .

[Compl. Ex. 16, Tab 12]

75. On January 8, 1996, Mr. McKinney responded to that letter by requesting that his application "be given proper consideration on the merits under the Board's requirements." In addition, Mr. McKinney stated: "To aid in the processing of my application I have included the wet stamp for my electrical registrations." The sheet included with this letter was a page with 7 seals on it; the 7 seals were professional engineer seals for Mr. McKinney for the states of Wisconsin, Pennsylvania, Nebraska, Montana, Ohio, Missouri, and Massachusetts. [Compl. Ex. 16, Tabs 8, 9, 10, 14] Mr. McKinney made this response while he was in Kentucky.

76. Thus, in applying for registration as an electrical engineer in California in 1995-96, Mr. McKinney made two representations regarding the states in which he was registered as an electrical engineer. The first representation, made on September 20, 1995, was that Mr. McKinney was a licensed electrical engineer in 5 states: Missouri, Montana, Nebraska, Ohio and Wisconsin. The second representation, made on January 8, 1996, was that Mr. McKinney was a licensed electrical engineer in 7 states: Wisconsin, Pennsylvania, Nebraska, Montana, Ohio, Missouri, and Massachusetts.

77. In fact, there was only one of any of the states claimed by Mr. McKinney in which Mr. McKinney was actually registered as an electrical engineer in 1995-96: Massachusetts. None of the remaining states mentioned by Mr. McKinney are "discipline" states, so it was impossible for Mr. McKinney to have been registered in those states as an electrical engineer.

78. Accordingly, the Hearing Officer finds that Mr. McKinney's statements

provided with his 1995-96 California application regarding the specific states in which he was registered as an electrical engineer were untruthful statements.

79. On July 13, 1998, Mr. McKinney signed another Application for Registration as a Professional Engineer, which he then submitted to the Board of Registration for Professional Engineers and Land Surveyors in California. As part of this application, Mr. McKinney stated:

Earl F. McKinney is licensed in 49 states, the District of Columbia and Puerto Rico. In California registered as a mechanical Engineer, License #18456. In addition, Earl is currently a licensed Electrical Engineer in Arizona, Massachusetts, Missouri, Montana, Nebraska, New Mexico, Ohio, and Wisconsin. Earl also has an application for electrical engineer submitted for the state of Louisiana.

[Compl. Ex. 16, Tab 31] Mr. McKinney signed this Application in Kentucky.

80. With his application, Mr. McKinney submitted a page with 8 seals on it, with the following hand-written notation: "8 states of 50 that I have obtained separate electrical engineer registrations." The 8 seals were professional engineer seals for Mr. McKinney for the states of Arizona, Massachusetts, Missouri, Montana, Nebraska, New Mexico, Ohio, and Wisconsin. [Compl. Ex. 16, Tab 20]

81. As part of the 1998 California application process, Arizona and Massachusetts verified that Mr. McKinney was registered as an electrical engineer in those states. [Compl. Ex. 16, Tab 31] In addition, although New Mexico is not a "discipline" state, *per se*, it does qualify engineers in specific branches of engineering; Mr. McKinney is qualified as an electrical engineer in New Mexico.

82. The remaining states included in Mr. McKinney's 1998 submission

(Missouri, Montana, Nebraska, Ohio, and Wisconsin) are not discipline states, so it was impossible for Mr. McKinney to have been registered in those states as an electrical engineer. Moreover, Mr. McKinney testified that, after he put the chart together regarding his registrations (about which he testified in the Nevada hearing on January 17, 1997), he knew that Ohio was not a discipline state; since he testified on January 17, 1997, that this chart had been put together, the Hearing Officer finds that Mr. McKinney knew that Ohio was not a discipline state when Mr. McKinney made his 1998 submission to California. [Tr., Vol. III, p. 29]

83. Accordingly, the Hearing Officer finds that Mr. McKinney's statement provided with his 1998 California application regarding the specific states in which he was registered as an electrical engineer was an untruthful statement.

C.2.e. Defense to Charge 2

84. Mr. McKinney's defense to charge 2 seems to be that the untruthful statements that he made regarding the specific states in which he was licensed as an electrical engineer were not made intentionally. Mr. McKinney makes two arguments in support of this defense.

85. Mr. McKinney's first argument in support of this defense is that his statements at the Nevada hearing were not intentionally untruthful because he only testified that he "believed" that he was registered as an electrical engineer in about 13 states. He states that he was not "absolutely sure" about the number of states in which he was registered as an electrical engineer when he gave this testimony. [Tr., Vol. V, p. 84]

86. The Hearing Officer does not accept Mr. McKinney's first argument in support of this defense. In order for a "belief" to act as a defense for making an untruthful statement, the belief would need to be reasonable and to be held in good faith. The Hearing Officer finds that Mr. McKinney's "belief" was neither reasonable nor held in good faith. First, Mr. McKinney testified that he knew the difference between a "discipline" state and a "PE" state, and that he knew of 5 "discipline" states; given that testimony, it was not reasonable for Mr. McKinney to testify that he believed he was registered as an electrical engineer in 13 states, when, according to his own testimony, it would have been possible for him to be so registered in only 5 states. Second, the Hearing Officer finds that it is neither reasonable nor in good faith for Mr. McKinney to plead ignorance regarding the status of his registrations as a professional engineer; since Mr. McKinney clearly intends to practice engineering in the states in which he is registered, it is his responsibility to know the way in which he is registered in those states. Third, the Hearing Officer finds that the way in which Mr. McKinney is registered as an engineer in the various states is a matter that is easily ascertainable and verifiable from the various state agencies that register engineers; Mr. McKinney could easily have determined the way in which he is registered in the various states if he had chosen to do so. Indeed, given that fact that Mr. McKinney testified that he has not even checked his own files to make this determination [Tr., Vol. III, p. 36], it appears that determining the status of his registrations in the various states may be as easy as checking his own files. Mr. McKinney's lack of reasonableness and good faith in this regard is evidenced by the fact that, as late as the hearing held in this matter in November 2001, Mr. McKinney still

did not know the way in which he is registered in the various states.

87. Mr. McKinney's second argument in support of this defense is that Mr. McKinney thought that he was registered as an electrical engineer in the states that he listed in his 1995-96 and 1998 California applications because his engineering seals for those states included an "E" in the registration numbers that appeared on the seals. [Tr., Vol. III, p. 26]

88. The Hearing Officer does not find this second argument plausible, however. First, not all of the seals that Mr. McKinney included in his California applications include the letter "E" on the seal. Specifically:

- Mr. McKinney's seals for Massachusetts and Arizona, which are the only two states in which Mr. McKinney was registered as an electrical engineer, do not include the letter "E" on the seals. Rather, the seals include the word "electrical." [Compl. Ex. 16, Tabs 14 and 20] Including the word of the particular discipline for which the individual is registered on the seal appears to be the standard for the seals for the "discipline" states: Mr. McKinney's California seal includes the word "mechanical," which is the discipline for which Mr. McKinney is registered in California [Compl. Ex. 16, Tab 21]; Mr. McKinney's Nevada seal includes the phrase "mechanical engineer," which is the discipline for which Mr. McKinney is registered in Nevada [Compl. Ex. 15].
- Mr. McKinney's seal for New Mexico contains neither the letter "E" nor the word "electrical." [Compl. Ex. 16, Tab 20]

Second, Mr. McKinney did not include Pennsylvania on his 1998 list of states for which he claimed registration as an electrical engineer, even though his Pennsylvania seal includes the letter "E." [Compl. Ex. 16, Tabs 14 and 20]

Third, Mr. McKinney testified that the Nevada hearing (which occurred on January 17, 1997) brought to his attention just how important it was to know about the status of

his registrations in the various states. [Tr., Vol. III, pp. 31-32] He indicated that after the Nevada hearing he went back and checked and determined that the "E" on the seals stood for the word "engineer" and did not indicate licensure as an electrical engineer. [Tr., Vol. III, p. 29] Thus, by at least the time of his 1998 California application, Mr. McKinney knew that the "E" on an engineering seal did not indicate registration as an electrical engineer.

89. Therefore, for all of these reasons, the Hearing Officer rejects this defense to this charge.

C.2.f. Conclusion Regarding Charge 2

90. In sum, the Hearing Officer finds that Mr. McKinney is guilty of the charge of making untruthful statements regarding the number of states in which he is registered as an electrical engineer: (a) in testifying before the Nevada Board of Professional Engineers; and (b) in applying for a license as an electrical engineer in California.

C.3. Charge 3: Statements Regarding the Extent of Practice in Nevada

91. Charge 3 is that Mr. McKinney, in testimony before the Nevada Board of Professional Engineers and Land Surveyors, made statements in an untruthful manner regarding the extent of Mr. McKinney's engineering practice in Nevada. [Statement of Facts and Charges, ¶ A]

92. During his testimony at the Nevada hearing referenced above (January 17, 1997), Mr. McKinney testified regarding why he signed and sealed electrical engineering work in Nevada when he was not registered as an electrical engineer in Nevada:

Q: Would you explain to the board why you stamped and signed electrical engineering work even though you are not

registered as an electrical engineer in the State of Nevada?

Mr. McKinney: Well, it was a mistake on my part. When I'm doing a number of these projects, I guess I saw the ME and I either did it mistakenly or I did not realize I was signing an electrical sheet in the State of Nevada in which I'm not a registered engineer. But I have made application in the last year for electrical registration. . . .

Q: That's my question, Mr. McKinney, were you aware that you were submitting electrical plans to the State of Nevada at the time you signed your seal?

Mr. McKinney: I didn't at the time, I didn't realize or I didn't recollect at the time that I was not registered as an electrical. And I thought, in relation to some states relate this to being incidental to the project because it's such a small space. . . . So this is in some places considered incidental to the project, but I made an error by signing it not being registered in Nevada as an electrical engineer.

[Compl. Ex. 15, pp. 9-10]

93. The Board alleges that these statements by Mr. McKinney were intended to lead the Nevada Board to believe that his sealing of one set of plans was an isolated incident, and that he simply forgot that he was not registered as an electrical engineer in Nevada, when in fact he was involved with numerous projects in Nevada.

94. Between February 15, 1994, and October 11, 1995, 26 different projects located in Nevada came into the offices of A & E Designers, Inc. [Compl. Exs. 1 and 4] Those projects would have required some type of review by Mr. McKinney. There is no evidence in the record, however, that Mr. McKinney signed and sealed any of those projects as an electrical engineer. Nor does the Hearing Officer find any evidence to support the allegation that Mr. McKinney was attempting to mislead the Nevada Board regarding the extent of his work on Nevada projects; the specific question of the extent

of Mr. McKinney's work in Nevada was not discussed in any kind of detail, or in any way by Mr. McKinney that the Hearing Officer finds to be misleading or untruthful.

95. In sum, the Hearing Officer finds that Mr. McKinney is not guilty of the charge of making statements in an untruthful manner at the Nevada hearing regarding the extent of Mr. McKinney's engineering practice in Nevada.

C.4. Charge 4: Statements Regarding the Number of Engineers on Staff

96. Charge 4 is that Mr. McKinney, in testimony before the Nevada Board of Professional Engineers and Land Surveyors, made untruthful statements regarding the number of engineers on his staff. [Statement of Facts and Charges, ¶ A]

97. During his testimony in the above-referenced hearing in Nevada on January 17, 1997, Mr. McKinney testified regarding the number of people working with him as follows:

Q: Perhaps it would be helpful if you advised the board as to your size of your organization.

Mr. McKinney: OK. I have approximately 30-35 persons and I've got three structural engineers, three electrical engineers, and three mechanical engineers, and I believe about 25 CAD stations networked together on a Novell network, driving two 38-inch Hewlett Packard plotters. And I've also got a Hewlett Packard 4B laser printer which runs 11 x 17 at 16 sheets a minute. And I also have a phone modem with a separate line. I've got E-Mail, and I'm just developing a web page. This is something I've researched. This is the 50-code requirement from all 50 states in the nation with all the deviation from whatever codes they are. A lot of people require that. That's going to be on our web page in about 3 months.

... Q: OK, when you said you have 35 people. Is that you that has it or A & E?

Mr. McKinney: It's A & E, I just say we're in the firm, it's approximately.

... Mr. McKinney: Well, yeah, I've got 30 people working for me - I've got 3 structural engineers - and I can't do all the work.

... Mr. McKinney: I have 30 persons, and nine different engineers.

Q: But you're a consultant to AE.

Mr. McKinney: Right. They do the designs and I check and review all the designs.

[Compl. Ex. 15, pp. 12, 15, 16, 40] Thus, Mr. McKinney testified that he had nine engineers working for him: 3 structural engineers, 3 electrical engineers, and 3 mechanical engineers.

98. When Mr. McKinney indicated that he had nine engineers working for him, he testified that he was including outside consultants whom he uses as needed. He considers the outside consultants to be part of his organization. [Tr., Vol. III, p. 62; Vol. V, p. 85] He testified that he was referring to the outside consultants who work in and around Lexington, Kentucky, but, in fact, he also uses outside consultants from around the country as needed. [Tr., Vol. V, pp. 83-84]

99. A & E Designers, Inc., hires engineers as outside consultants as needed when the company's work load requires such assistance. These consultants are hired to work on particular projects. [Tr., Vol. IV, pp. 120-121; Vol. V, pp. 75, 161-162] The company does that, rather than having the engineers on staff as full-time employees, because the company does not have enough continuous work for the outside consultants in the fields of their expertise. [Tr., Vol. V, pp. 74-75]

100. Telephone listings for A & E Designers, Inc., were provided to the company employees on October 29, 1996, December 6, 1996, and March 25, 1997.

[Tr., Vol. I, p. 93; Comp. Ex. 9] These are listings of people who work for the company full time; the listings also include some outside consultants.

101. These telephone listings are consistent with Mr. McKinney's testimony that he had approximately 30 - 35 people working for him. The telephone listing for October 29, 1996, listed 27 people other than Mr. McKinney. The telephone listing for December 6, 1996, listed 32 people other than Mr. McKinney. The telephone listing for March 25, 1997, listed 30 people other than Mr. McKinney. [Compl Ex. 9]

102. The telephone listings, however, are not consistent with Mr. McKinney's testimony that the 30 - 35 people that he had working for him included 9 engineers. The telephone listing for October 29, 1996, listed one full-time structural engineer (Bob Wooton) and one outside consultant structural engineer (Farid Mohseni). The telephone listing for December 6, 1996, listed one full-time structural engineer (Bob Wooton) and one outside consultant structural engineer (Paul Haggard). The telephone listing for March 25, 1997, listed one full-time structural engineer (Bob Wooton) and two outside consultant structural engineers (Paul Haggard and Farid Mohseni). [Tr., Vol. I, pp. 94-98; Compl. Ex. 9]

103. Mr. McKinney's explanation for this inconsistency is that the outside consultants often were not included on the telephone listings. While the Hearing Officer understands and accepts the fact that a company telephone list might not include any of the outside consultants used by the company, no credible evidence was presented to

explain why the company telephone list would include some but not all of the outside consultants used by the company at the time that the list was generated. On the March 27, 1997, telephone list, for example, there is a separate listing at the bottom of the page that is titled "consultants"; that separate listing includes only two engineer consultants. No credible explanation was given regarding why, if there were, in fact, numerous other outside consultants being used at the time that this list was generated, the names of the other consultants were not included on this list.

104. Even if, however, there were some credible explanation for not including the names of all of the outside engineer consultants on the company telephone list, there has been no evidence offered to supply the names of the 9 engineers whom Mr. McKinney claimed were working for him in January 1997. When Mr. McKinney testified about this issue at the hearing in the present matter, he identified by name only three outside consultant engineers with whom he worked at that time: Paul Haggard (structural engineer) Farid Mohseni (structural engineer), and Joe Pogue (structural engineer). Mr. McKinney also identified Joe Howard (electrical engineer) as a consultant with whom he presently works. [Tr., Vol. V, pp. 74-75] Although Tony Smith, the former General Manager for A & E Designers, Inc., also testified that outside consultants were used by the company, Mr. Smith only indicated that those outside consultants were electrical engineers and structural engineers. Except for the engineer consultants on the telephone listings (Bob Wooton, Paul Haggard, and Farid Mohseni), Mr. Smith identified none of the engineer consultants by name; neither did Mr. Smith indicate the number of those outside consultants who were used by the company. [Tr., Vol. IV, pp. 117-121]

Bob Wooton, a former full-time engineer consultant for A & E Designers, Inc., identified two Kentucky outside engineer consultants, in addition to Paul Haggard and Farid Mohseni, who worked with the company at the time in question: Joseph Pogue (structural engineer) and Grant Wilson (electrical engineer). Mr. Wooton also testified that he does not know Joe Howard, the electrical engineer consultant with whom Mr. McKinney presently works. [Tr., Vol. I, pp. 94-98; Vol. II, pp. 43-47]

105. Thus, the Hearing Officer finds that, while A & E Designers, Inc., may have used additional consultants from time to time, in January 1997 the company used, at most, five outside consultants on a regular enough basis to consider them to be part of the company: Bob Wooton (full-time structural); Paul Haggard (structural); Farid Mohseni (structural); Joseph Pogue (structural); and Grant Wilson (electrical). Of those five engineer consultants, 4 are structural engineers and one is an electrical engineer; none of those individuals is a mechanical engineer. Clearly, this number of consultant engineers does not constitute the nine engineers represented by Mr. McKinney as being part of "his organization," three of whom were to be structural engineers, three of whom were to be electrical engineers, and three of whom were to be mechanical engineers.

106. Accordingly, the Hearing Officer finds that Mr. McKinney is guilty of the charge of making untruthful statements at the Nevada hearing about the number of engineers on his staff.

D. Category 2 of Charges: Allegations of Signing and Sealing Plans Inappropriately

107. Charges 5, 6, 7, 8, and 9 deal with allegations that Mr. McKinney signed and sealed engineering plans inappropriately. The Hearing Officer will address each of

these charges in turn. First, however, the Hearing Officer will address background information regarding the requirement of signing and sealing plans,

D.1. Background: Signing and Sealing Plans

108. An engineer is required to sign, date, and stamp with his seal any plans that the engineer has approved before the approved plans are delivered to the client or to a public agency. [See KRS 322.340; Tr., Vol. I, p. 65] The engineer's original signature and seal are required on each drawing included in every set of plans that the engineer has approved, whether the drawing is the original drawing or a copy of the original drawing. [Tr., Vol. IV, p. 112] All states require a registered or licensed engineer to sign and seal plans that the engineer has approved. [Tr., Vol. V, p. 177]

109. The engineer who signs and seals a plan becomes responsible for what is on each drawing that the engineer has signed and sealed. One of the reasons for requiring a registered engineer to sign and seal engineering plans is to ensure that someone with the required expertise has reviewed the project and has determined that the project meets the requirements for protecting life and safety. [Tr., Vol. V, pp. 176-177] Mr. McKinney believes that the paramount duty of the engineer in reviewing plans is to protect the life and safety of the people who will be occupying the building in question. [Tr., Vol. V, p. 16]

110. When an engineer reviews a set of plans, the engineer should be reviewing the plans for code compliance and for engineering integrity. [Tr., Vol. I, p. 101] Some of the review could require computations. [Tr., Vol. I, pp. 105-106] When such computations are involved, the reviewing engineer either would have to do the

calculations from scratch or would have to check the calculations of the person who drew the plans. [Tr., Vol. I, p. 127]

D.2. Charge 5: Signing and Sealing Engineering Plans Without Review

111. Charge 5 is that, between 1993 and 1996, Mr. McKinney customarily signed and sealed engineering plans and mailed them out the same day or the next day without having reviewed the plans. [Statement of Facts and Charges, ¶ I]

112. In order to address this charge, it is important to understand prototype projects and plans, the way in which prototype plans are developed and reviewed, and the involvement of Mr. McKinney and A & E Designers, Inc., with the development and review of prototype plans. Therefore, before the Hearing Officer addresses the substance of this charge, the Hearing Officer will address this background information.

D.2.a. Background: Prototype Projects and Plans

113. There are two general types of projects in engineering firms. One type is the specialty project, which is a one-of-a-kind project. The other type are prototype projects, which are projects that have the same standard design details in each project and that use these standard design details on repeat projects. [Tr., Vol. III, p. 67; Vol. V, pp. 160-161]

114. Common examples of prototype projects are fast food restaurants, hotels, and retail stores:

115. A plan for a prototype project may be developed for a specific building code that is used by several states. The standard design details in such a prototype plan would be complete and in compliance with the specific building code for which it was

developed. [Tr., Vol. II, p. 19] The standard design details in such a prototype plan may still need to be changed to accommodate local building code requirements. [Tr., Vol. V, p. 16]

116. In addition, a plan for a prototype project may be developed for different regions of the country, to account for special climate and geological conditions in those difference parts of the country. The standard design details in such a prototype plan would be sufficient to meet the same general climate and geological conditions in a region. [Tr., Vol. III, pp. 87-88; Vol. V, pp. 69-70] The standard design details in such a prototype project may still need to be changed to meet local differences in conditions. For example, the soil conditions could differ even from one side of town to another side of town; such differences would need to be taken into consideration in the final design details for the plan. [Tr., Vol. I, pp. 11-12]

117. Thus, even if a plan is a prototype design, the engineer would need to review the plan, before the engineer signs and seals the plan, to ensure that the plan meets all state and local code requirements and all requirements for different climatic and geological conditions.

118. The time needed to design and review a project depends on the size and nature of the project. If the project is a small project in an already-existing structure, such as a mall, the project could be completed in a day. If it is a larger, free standing project, it could take 30-45 days to complete the project. [Tr., Vol. III, p. 66]

D.2.b. Background: Mr. McKinney's Involvement with Prototype Plans

119. Mr. McKinney and A & E Designers, Inc., specialize in prototype projects,

such as hotels, restaurants, and retail stores. A & E Designers, Inc., directs its marketing to companies that do this type of repeat project, such as restaurants (e.g., McDonald's, KFC, Taco Bell, and Pizza Hut), hotel chains (e.g., Holiday Inn Express), and retailers (e.g., Claire's Boutique). [Tr., Vol. V, pp. 12-13]

120. At A & E Designers, Inc., approximately 85% of the company's projects are prototype projects and approximately 15% of the company's projects are specialty projects. [Tr., Vol. V, p. 161] Mr. McKinney describes the work performed by A & E Designers as follows:

Projects include food service facilities, hotels, motels, and resorts; shopping centers; office buildings; retail stores; housing; grocery stores; manufacturing plants; warehouses; educational and training facilities; laboratories; post offices; clubhouses and recreational facilities; service stations.

(1) A & E Designers has provided Architectural and Engineering Services for thousands of prototypes . . . across the United States. . . .

(2) A & E Designers has designed or site adapted a large number of prototypes (Please note that the design of these prototypes have been completed over the past 20 years. Also many of these prototypes have been designed under the name of Hamill and McKinney Architects and Engineers, Inc.)

[Resp. Ex. 5]

121. Mr. McKinney often works with a national company (such as National Air Systems, Kinko's, and Heilig-Meyers) in the development of the company's original prototype designs. [Tr., Vol. III, p. 72; Vol. V, p. 22] Sometimes Mr. McKinney will visit the company headquarters and work with company officials for two or three days to develop the prototypes. [Tr., Vol. V, pp. 22-23] Sometimes, such as with Holiday Inn

Express, Mr. McKinney will obtain a contract to produce the prototype designs for the company. [Tr., Vol. V, p. 23] Sometimes, such as with Sonic Industries, Mr. McKinney will obtain a contract to upgrade the company's standard plans to meet all current codes. [Tr., Vol. V, pp. 57-58; Resp. Exs. 12, 13]

122. Mr. McKinney has helped to prepare prototype designs for between 50 and 100 companies (hotels, retail stores, and restaurants). [Tr., Vol. V, p. 24] The prototype designs that are developed are then used in many different projects. [Tr., Vol. III, pp. 73-74; Vol. V, p. 23]

123. This preparation of a prototype design occurs before Mr. McKinney is asked to review a particular, site-specific project. [Tr., Vol. V, pp. 32-33]

124. One type of prototype design is for a store that is put into a mall or another already-existing structure. These projects are smaller and take less time to design and review than the designs for a free-standing building. [Tr., Vol. V, pp. 167-168]

125. A & E Designers, Inc., does a lot of these small prototype projects, like Claire's Boutique stores, which are six to eight hundred square feet stores located in malls. The company completes about 200 Claire's Boutiques each year. Each project can take less than one day to complete. [Tr., Vol. III, pp. 66-67] The company completed over 200 Dollar General stores in 2001; each of those projects could be completed in less than a day. [Tr., Vol. III, p. 67] The company completed over 180 Dollar Tree stores in 2001; each of those projects could be completed in about one day. [Tr., Vol. III, p. 67]

126. Some manufacturers will send in designs for standard manufactured

products to be reviewed and approved by A & E Designers, Inc. These products will often be used over and over again in the same type of facility, so the designs for these products are used as prototype designs. [Tr., Vol. V, pp. 168-169]

127. As more and more prototype projects are done for a client, fewer revisions need to be made on the prototype plans. [Tr., Vol. V, p. 65] Less time is also needed in the review process, because fewer changes need to be made in the plans. [Tr., Vol. I, p. 21; Vol. V, p. 65]

D.2.c. Background: Review of Plans and Projects at A & E Designers, Inc.

128. There is some inconsistency in the testimony regarding the manner in which plans are handled at A & E Designers, Inc. Although Mr. McKinney testified that he reviews plans before they go the print room [Tr., Vol. V, p. 111], Mr. McKinney also testified that, when a set of engineering plans arrives in the offices of A & E Designers, Inc., the plans are delivered either to the print room (for copying) or to Mr. McKinney's office for review. [Tr., Vol. III, p. 83] Mr. McKinney also testified that he did not sign plans that had been copied in the print room until he had reviewed the plans in his office. [Tr., Vol. III, p. 83]

129. Regardless of the manner in which it happens, once the plans are in their final form, the plans go to Mr. McKinney for his final review and signature and seal. [Tr., Vol. V, pp. 170-171]

130. At A & E Designers, Inc., Mr. McKinney signs and seals all plans that require an engineer's seal. During the relevant time period, no one in the company other than Mr. McKinney signed and sealed any plans. [Tr., Vol. V, pp. 159, 175]

131. Mr. McKinney provides "hands-on" oversight of the engineers and design support staff that work for A & E Designers, Inc. He checks daily on most of the projects in the office. [Tr., Vol. V, p. 36] When he is out of the office, he calls into the office two or three times a day. [Tr., Vol. V, pp. 81-82; Compl. Ex. 8, Tab 4]

132. There is daily communication between A & E Designers, Inc., and its clients regarding the plans that have been submitted for review. [Tr., Vol. V, pp. 64-65]

133. During the relevant time period, A & E Designers, Inc., handled approximately 1000 projects a year; approximately 1% - 2% of those projects were located in Kentucky. About 60% - 70% (i.e., 600 - 700) of those 1000 projects required Mr. McKinney's review of plans and his signature and seal on the final plans; approximately 6 - 14 of those projects were located in Kentucky. [Tr., Vol. V, pp. 101, 173-175]⁴ The remaining 300 - 400 projects per year were requests for designs, requests for calculations, specifications for review, requests for information, and samples. [Tr., Vol. V, pp. 140-147] For all of these different types of projects at A & E Designers, Inc., Mr. McKinney would perform the final review of each project. [Tr., Vol. V, pp. 150-152]

134. During the relevant time period, Mr. McKinney and A & E Designers, Inc., handled the projects that were located in Kentucky in the same manner in which they handled the projects that were located in other states.

⁴The Hearing Officer notes that the parties spent a great deal of time arguing about these numbers, based on what the 1994 and 1995 Master Lists [Compl. Exs. 4 and 1, respectively] either indicated or did not indicate about these numbers. The Hearing Officer finds no testimony regarding the Master Lists very helpful or persuasive in making a finding regarding these numbers based on the information in the Master Lists. The Hearing Officer makes her finding about these numbers solely on the testimony of Mr. McKinney, which the Hearing Officer finds to be credible testimony.

D.2.d. Substance of Charge 5

135. The substance of Charge 5 centers on the question of whether Mr. McKinney customarily signed and sealed engineering plans without first reviewing the plans during the relevant time period.

136. There seems to be no dispute that plans would come into and go out from A & E Designers, Inc., very quickly, sometimes within a day, during the relevant time period. The timing of the comings and goings of these plans at A & E Designers, Inc., however, has very little to do with deciding whether Mr. McKinney reviewed the plans prior to signing and sealing the plans, because often the plans could be involved in review by e-mail, or by in-person visit by Mr. McKinney, prior to the plans actually being delivered to A & E Designers, Inc., for signature and seal. Accordingly, the fact that plans may have been physically present in the offices of A & E Designers, Inc., for only a short period of time does not indicate the amount of time that Mr. McKinney could have spent on the review of the plans prior to signing and sealing the plans.

137. There is no evidence in the record that establishes the standard to be used for setting the amount of time that is required for an engineer to review a set of plans prior to signing and sealing the plans. It does seem clear, however, that the amount of time required for review of plans depends on the nature of the project for which the plans have been developed.

138. Review can be done more quickly on prototype projects than on specialty projects. For example, A & E Designers, Inc., keeps a log of local code requirements; once a prototype plan has been altered to meet local code requirements, very little, if

any, change needs to be made on the plan for use in the same locality for another building using the same prototype plan. [Tr., Vol. V, pp. 27, 33-34] Once A & E Designers, Inc., has applied local code requirements to a prototype plan, the knowledge of those local code requirements can be used in other prototype plans for the same region. [Tr., Vol. V, p. 34]

139. Whatever specific amount of time may be required in the review of plans, every set of plans that comes to an engineer for signature and seal, whether for a prototype project or for a specialty project, will require some code review and some revision, however minor. During the relevant time period, every set of plans submitted to A & E Designers, Inc., required some review by Mr. McKinney before Mr. McKinney signed and sealed the plans for the project. [Tr., Vol. V, pp. 114-116]

140. Mr. McKinney testified that, for a prototype project such as a Perkin's restaurant, which has approximately 40-50 sheets in the final plans, Mr. McKinney would spend between 1 and 2 hours in reviewing the final plans. [Tr., Vol. III, p. 83] For a prototype project such as the Holiday Inn Express in Dry Ridge, Kentucky, Mr. McKinney would spend a few hours in reviewing the final plans. [Tr., Vol. V, pp. 111-112] For a different type of hotel, Mr. McKinney could spend a total of 30 - 40 hours in reviewing the final plans. [Tr., Vol. V, p. 112]

141. Thus, according to Mr. McKinney's testimony, it appears that the minimum amount of time that Mr. McKinney spent on reviewing the final plans for a prototype project was approximately 1 hour, and the maximum amount of time that Mr. McKinney spent on reviewing the final plans for a prototype project was approximately 3 hours.

142. The time required in this process, however, also included the time required for Mr. McKinney to actually sign each page of each set of the plans that he had reviewed. The amount of time required for that process varied, according to the size of the project and the number of sets that had to be signed.

143. The final plans for a free-standing, small fast food restaurant such as Waffle House would include about 20-24 sheets per set of plans. [Tr., Vol. V, pp. 164-165] The final plans for a McDonald's fast food restaurant would include about 35-40 sheets per set of plans. [Tr., Vol. V, p. 165] A larger restaurant, such as Perkin's, would have approximately 40-50 sheets per set of plans. [Tr., Vol. V, p. 166] Larger prototype projects, such as the Holiday Inn Express in Dry Ridge, Kentucky, would have as approximately 125 sheets per set of plans. [Tr., Vol. III, p. 94; Vol. V, pp. 110-111]

144. A number of sets of these plans would be made for Mr. McKinney to sign and seal. Sometimes, two or three sets of the plans would be required; other times a significantly larger number of sets (7 sets or more) of the plans would be required. [Tr., Vol. III, p. 95; Vol. IV, p. 49; Vol. V, pp. 164-166]

145. It would take Mr. McKinney between 30-45 minutes to sign three sets of 24 sheets (for a total of 72 sheets) for a project such as Waffle House. [Tr., Vol. V, pp. 172-173] It would take Mr. McKinney approximately 2 hours to sign 5 sets of 125 sheets (for a total of 625 sheets). [Tr., Vol. V, pp. 110-111] There is no evidence in the record regarding the amount of time that it would take Mr. McKinney to sign a larger number of sets of plans.

146. Thus, according to Mr. McKinney's testimony, the minimum amount of

time that he would spend in signing the sets of prototype plans for a project would be approximately 30 minutes; the maximum amount of time that he would spend in signing the sets of prototype plans for a project would be approximately 2 hours.

147. Consequently, in combining the time that Mr. McKinney estimated that he would spend in reviewing and signing the sets of prototype plans submitted to him, the minimum total amount of time (for both reviewing and signing the sets of prototype plans for a project) would be approximately 1 hour and 30 minutes. The maximum total amount of time (for both reviewing and signing the sets of prototype plans for a project) would be approximately 5 hours. The average amount of time, then, for both reviewing and signing the sets of prototype plans for a project would be approximately 3.25 hours.

148. Mr. Wooton testified that he saw plans come into the office of A. & E. Designers, Inc., and be signed and sealed with Mr. McKinney's signature and seal, and sent back out without review by Mr. McKinney. [Tr., Vol. I, pp. 98-99] Mr. McKinney testified that he personally reviewed everything that he signed and sealed prior to signing and sealing it. [Tr., Vol. III, p. 83]⁵

149. The Hearing Officer finds that the evidence on the record, and simple arithmetic, support Mr. Wooton's assertions that plans were sent out of A & E Designers,

⁵Although Tony Smith, the former General Manager of A & E Designers, Inc., testified that Mr. McKinney reviewed every set of plans before the plans were sent out [Tr., Vol. IV, p. 66], the Hearing Officer finds that Mr. Smith could not have known if Mr. McKinney actually reviewed the plans before Mr. McKinney signed the plans. While Mr. Smith's testimony is credible regarding the plans being sent to Mr. McKinney's office for review, there is no way for Mr. Smith to have known whether Mr. McKinney actually reviewed the plans that were in Mr. McKinney's office unless Mr. Smith had been in Mr. McKinney's office to observe such review. Mr. Smith, as General Manager of the company, simply had too many other duties to perform to have spent any appreciable amount of time in Mr. McKinney's office.

Inc., that contained Mr. McKinney's seal and signature, but that Mr. McKinney had not reviewed.

150. If Mr. McKinney had spent 8 hours a day, 5 days a week, 52 weeks of the year in reviewing and signing plans (without ever taking a day off, and without ever doing any other type of engineering work or work for A & E Designers, Inc.), Mr. McKinney would have spent a total of 2080 hours a year in those tasks. If there were 600 sets of plans a year that required this service, Mr. McKinney would have averaged 3.47 hours per project; if there were 700 sets of plans a year that required this service, Mr. McKinney would have averaged 2.97 hours per project.

151. If all of those sets of plans had been prototype plans, then it is possible that Mr. McKinney could have reviewed and signed all of those plans, if he had done nothing else for those 2080 hours a year, because the average number of hours per project (2.97 - 3.47 hours) is consistent with the average number of hours (3.25 hours) that it would have taken, according to Mr. McKinney's testimony, for Mr. McKinney to have reviewed and signed the sets of prototype plans, as discussed above.

152. All of the plans submitted for review by Mr. McKinney, however, were not prototype plans. As Mr. McKinney testified, 15% of the projects at A & E Designers, Inc., were specialty projects; the plans for those specialty projects would have taken substantially more time for Mr. McKinney to review.

153. In addition, Mr. McKinney performed many other tasks in his engineering practice besides reviewing, signing, and sealing plans. Mr. McKinney lists his responsibilities in A & E Designers, Inc., during the relevant time period as follows:

Responsible for management and design calculations of civil, (site planning) architectural, structural, mechanical, plumbing, electrical and fire protection; client liaison; facility programming, scheduling and budgeting; overall project development and delivery; review of reports; studies and designs, with projects management design teams; research and supervision; marketing; and contractual decisions.

[Resp. Ex. 5] All of the work in this list would have required some amount of time from Mr. McKinney.

154. This list of responsibilities includes the 300 - 400 other projects (that were not plans) that were submitted to A & E Designers, Inc., each year during the relevant time period, all of which required some form of review by Mr. McKinney. Such review would also have required some amount of Mr. McKinney's time.

155. In addition, Mr. McKinney testified that he spent significant amounts of time helping to design or to develop the designs for original company prototypes. Such work would also require some amount of Mr. McKinney's time.

156. Mr. McKinney testified that he spent a great deal of time working, and that his working hours were not limited to 8 hours a day during the regular work week. But even if Mr. McKinney had worked an extra 10 hours a week for 52 weeks a year, without ever taking any time off, that would only total an extra 520 work hours a year. That number of hours might have been enough time to cover Mr. McKinney's review of the 300 - 400 projects, other than plans, that Mr. McKinney testified he reviewed each year. If there were 300 such projects a year, those extra 520 work hours would have allowed an average of 1.73 hours of review for each project; if there were 400 such projects a year, those extra work hours would have allowed an average of .77 hours of review for

each project. There still would have been no time, however, for Mr. McKinney to have performed all of the other business activities that Mr. McKinney testified that he performed each year during the relevant time period.

157. Accordingly, the Hearing Officer finds that it was impossible for Mr. McKinney to have performed all of the tasks that he says he performed and, at the same time, to have reviewed all plans prior to signing and sealing the plans. Consequently, the Hearing Officer finds that, during the relevant time period, Mr. McKinney signed and sealed plans without first reviewing the plans and, thus, that Mr. McKinney is guilty of this charge.⁶

D.3. Charge 6: Signing Blank Vellum and Blank Blue-Line Sheets

158. Charge 6 is that Mr. McKinney signed blank vellum and blank blue-line sheets so that, in his absence, plans that had not been reviewed by him could be processed and forwarded. [Statement of Facts and Charges, ¶ C]

159. Vellum is a type of paper on which a plan is drawn. Blue-line paper is paper that is used for making a copy from an original that is on vellum or another type of original paper. [Tr., Vol. I, p. 74]

160. Mr. McKinney has signed blank blue-line paper on many occasions. He often would sign a pack of 250 sheets of blue-line paper. [Tr., Vol. I, pp. 76-77; Vol. IV, pp. 48-49]

⁶The Hearing Officer notes that there is some dispute between the parties regarding the requirement that an engineer not sign and seal any document not prepared by him or under his direct supervisory control. The Hearing Officer finds that this regulatory requirement is not connected with this charge, because there is no credible evidence in the record that Mr. McKinney signed and sealed documents that were not prepared under his direct supervisory control.

161. Mr. McKinney testified that he signed blank undeveloped blue-line paper when there were large numbers of copies to make for projects. [Tr., Vol. III, p. 94] He did this because A & E Designers, Inc., uses an ammonia blueprint machine, and the fumes bother his lungs. [Tr., Vol. III, p. 94]

162. Mr. McKinney also signed blank paper when the state seal was an embossed seal, because it is hard to write across an embossed seal. [Tr., Vol. V, pp. 80-81]

163. Mr. McKinney also signed blank paper before he left the office if he had reviewed and approved plans that he then authorized office personnel to make copies of in his absence. [Tr., Vol. III, pp. 95-96] This has happened on numerous occasions. [Tr., Vol. I, p. 77]

164. For example, Mr. McKinney was absent from the offices of A & E Designers from June 23 through July 3, 1994, when he was on a trip to Turkey. [Tr., Vol. I, pp. 80, 83-84; Compl. Ex. 8, Tab 4] While Mr. McKinney was out of the office on this trip, Mr. McKinney's signature and seal were placed on plans for an Advance Auto Parts store in Hopkinsville, Kentucky. [Tr., Vol. I, pp. 84-85; Compl. Ex. 6]

165. Mr. McKinney testified that he approved some projects before he went to Turkey and authorized his staff to print the plans while he was out of the office. [Tr., Vol. III, p. 95] He signed one package of 14 by 36 blue-line paper and one package of 30 by 42 blue line paper before he left on his trip. [Tr., Vol. III, p. 95] He took the appropriate seals out of the locked cabinet where they are kept so that the seals would be available to be used on these plans in his absence. [Tr., Vol. III, p. 96]

166. Mr. McKinney testified that he never directed employees to print out plans on pre-signed paper unless he had reviewed the plans first. [Tr., Vol. V, p. 83] Although Bob Wooton, a former employee of A & E Designers, Inc., testified that plans were printed on pre-signed blue-line paper without Mr. McKinney's prior review of the plans when Mr. McKinney was out of the office, the Hearing Officer does not find that testimony credible; Mr. Wooton was not in a position to know whether Mr. McKinney had reviewed the plans prior to Mr. McKinney's absence from the office.

167. The Hearing Officer finds no credible evidence in the record to support the Board's assertion that, in Mr. McKinney's absence, the pre-signed blue-line paper was used to print plans that had not been reviewed by Mr. McKinney. In addition, the Hearing Officer notes that there is no evidence in the record to indicate that engineering standards would prohibit an engineer from signing blank blue-line paper prior to the printing of sets of approved plans on the signed paper.

168. Therefore, the Hearing Officer finds that Mr. McKinney is not guilty of this charge.

D.4. Charge 7: Inappropriate Use of Logo

169. Charge 7 is that Mr. McKinney used his logo in an inappropriate manner by: (a) receiving plans from individuals who were not under Mr. McKinney's direct supervisory control, removing any identification that would be on the plans of the individual who prepared the plans, and then applying the logo of Earl F. McKinney or of A & E Designers, Inc., to create the impression that Mr. McKinney had created the plans; and (b) supplying his logo to other designers on electronic media so that those other

designers could insert his logo onto plans to create the impression that Mr. McKinney had created the plans. [Statement of Facts and Charges, ¶ 1]

170. The company logo for A & E Designers, Inc., is required to be placed on each sheet that is part of the set of final project plans that have been signed and sealed by Mr. McKinney. [Tr., Vol. V, p. 183]

171. During the time period in question, A & E Designers, Inc., was using Computer-Assisted Design (CAD) Programs. [Tr., Vol. V, p. 17]

172. A majority of the clients of A & E Designers, Inc., would e-mail drawings to A & E for review. [Tr., Vol. V, p. 17] During the time period in question, clients would send drawings to A & E by electronic transmission, from a sending computer to a receiving computer. [Tr., Vol. V, p. 18]

173. Two clients that regularly sent drawings to A & E Designers by electronic transmission were Kinko's and Holiday Inn. The drawings would be sent back and forth by electronic transmission; the party receiving the drawings would print them out, review them, make any changes to them, and send them back to the other party. This process would continue until the drawings were finalized and signed and sealed by Mr. McKinney. [Tr., Vol. V, p. 19]

174. Sometimes, after the prototype plans had been approved by Mr. McKinney, the client would print out the required number of copies of the plans for a particular site and then send the copies to Mr. McKinney for his signature and seal; these copies would be printed out with Mr. McKinney's logo on them. This was a cost-savings measure for the client. [Tr., Vol. V, p. 66]

175. There is no evidence in the record that Mr. McKinney's logo was ever placed on plans that Mr. McKinney did not help to create or did not have the necessary control over.

176. Therefore, the Hearing Officer finds that Mr. McKinney is not guilty of this charge.

D.5. Charge 8: Signing and Sealing Incomplete Plans for Holiday Inn Express

177. Charge 8 is that Mr. McKinney signed and sealed engineering plans for a Holiday Inn Express in Dry Ridge, Kentucky, and submitted the plans to the Department of Housing, Buildings & Construction, knowing that the plumbing plans were incomplete. [Statement of Facts and Charges, ¶ F]

178. Some time prior to September 20, 1996, Mr. McKinney signed and sealed engineering plans for a Holiday Inn Express in Dry Ridge, Kentucky. The plans included 125 sheets. They were submitted to the Department of Housing, Buildings & Construction in Frankfort, Kentucky. [Tr., Vol. V, pp. 86-87, 90-91, 103]

179. The plans submitted to the Department of Housing, Buildings & Construction were complete except for two or three sheets of riser diagrams for the plumbing. [Tr., Vol. V, pp. 86-87, 103]

180. The plumbing plans for such a project are required to be sent to the regional health department for review. After the health department review, the plans are sent on by the health department to the Department of Housing, Buildings & Construction. [Tr., Vol. V, pp. 87-88]

181. Mr. McKinney testified that it was not necessary to submit the plumbing

diagrams to the Department of Housing, Buildings & Construction at the time that the rest of the plans were submitted, because those diagrams were not necessary for that Department to begin its review of the plans. [Tr., Vol. V, pp. 90-91] The plans were sent in without the plumbing diagrams in order to start the permitting process on the plans. [Tr., Vol. V, p. 90] Mr. McKinney knew that the plumbing diagrams would be finished in a day or two and then would be sent to the regional health department for review. [Tr., Vol. V, p. 90] Mr. McKinney testified that the plans were complete for that particular submission to the Department of Housing, Buildings & Construction. [Tr., Vol. V, p. 106]

182. This Holiday Inn project was in Grant County, Kentucky. A & E Designers, Inc., sent 5 sets of plumbing plans regarding this project to the Northern Kentucky Independent District Health Department for review on September 20, 1996. [Tr., Vol. V, pp. 89-90; Resp. Exs. 18, 19] After the District Health Department approved the plumbing plans, that department sent the plans to the Department of Housing, Buildings & Construction for that Department's review. [Tr., Vol. II, p. 65; Vol. V, pp. 90, 102]

183. On September 30, 1996, the Division of Plumbing, Department of Housing, Buildings & Construction, sent Mr. McKinney a letter, stating:

We are in receipt of plans from you for the above captioned project [Holiday Inn Express, Dry Ridge, Kentucky]. We have reviewed these plans and cannot complete our review.

Please revise the riser diagram so that it is drawn in compliance with the Kentucky State Plumbing Code, and attach it to each set of plans. Also, please label openings and size all piping on the waste riser diagrams.

We are returning these plans to you NOT APPROVED which

can be resubmitted to this office upon revising the riser diagram, and we will immediately reinstitute our review.

[Compl. Ex. 10]

184. On October 11, 1996, the Division of Plumbing, Department of Housing, Buildings & Construction, sent Mr. McKinney a letter, stating:

We are in receipt of plans from you for the above captioned project [Holiday Inn Express, Dry Ridge, Kentucky]. We have reviewed these plans and cannot complete our review for the following reasons:

1. Changes and revisions were made on one of the plans to assist you in revising the other plans as noted. Please revise all other plans accordingly.
2. Please include a hub drain riser diagram for the vending area, the second and third floors drawn in compliance with the Kentucky State Plumbing Code and attach it to each set of plans.
3. The risers for "F" and "G" do not correspond with the floor plan. Please clarify which openings are for which riser.

We are returning these plans to you NOT APPROVED which can be resubmitted to this office pending completion of the above requested information, and we will reinstitute our review.

[Compl. Ex. 10]

185. It is not unusual for a permitting authority, such as the Kentucky Department of Housing, Buildings, & Construction, to send plans back with comments, changes, and corrections on the plans. [Tr., Vol. II, pp. 13-14, 16; Vol. IV, p. 48] There is no evidence in the record that such a return of plans means that Mr. McKinney submitted his plans incorrectly in the first place.

186. In sum, the Hearing Officer finds that Mr. McKinney did not submit his plans for this Holiday Inn Express incorrectly or inappropriately when he submitted the plans to the Kentucky Department of Housing, Buildings, & Construction without the 2 or 3 sheets of riser diagrams.

187. Accordingly, the Hearing Officer finds that Mr. McKinney is not guilty of this charge.

D.6. Charge 9: Applying Engineering Seal to Survey Plat

188. Charge 9 is that Mr. McKinney applied his Kentucky engineering seal to a survey plat of three lots owned by Halray, Inc., in Hopkinsville, Kentucky. [Statement of Facts and Charges, ¶ H]

189. In 1994, Mr. McKinney signed and sealed a document that is labeled both "site plan" and "survey plat." [Compl. Ex. 13]

190. This document is a boundary survey. It shows things that are commonly associated with a survey plat: the boundary of the property, some easements associated with that property, adjoining landowners, and vicinity maps. [Tr., Vol. II, p. 99; Vol. III, p. 109] This document is not a site plan, because it does not show things that typically appear on site plans: drainage or planned drainage, building pads, original contours, plus any proposed changes to the contours, or something that would identify the grading plan for a site. [Tr., Vol. II, pp. 99-100] A site plan will show the building on the site; it also will show a utility plan (water, sewer, gas, electrical) and/a grading plan. [Tr., Vol. V, p. 95]

191. Although Mr. McKinney agreed that this document is a boundary survey

[Tr., Vol. III, p. 109], he later testified that he intended to use the document as a site plan so that it would not have to be reproduced. [Tr., Vol. V, p. 95] This document, however, does not show the building on the lot, which is an important part of a site plan. [Tr., Vol. V, pp. 127-130]

192. This document was part of a set of plans submitted for a Blockbuster Video store in Hopkinsville, Kentucky. The set of plans included 9 architectural sheets, 2 structural sheets, 2 mechanical sheets, and 4 electrical sheets. [Tr., Vol. V, pp. 93-94]

193. The plat survey was provided by Crawford Land Surveying of Nashville, Tennessee. Crawford Land Surveying is not a permitted surveying firm in Kentucky. The owner of that firm is James Allen Crawford, who has never been a licensed land surveyor in Kentucky. [Compl. Ex. 13; Tr., Vol. II, p. 108]

194. In Kentucky, an individual may not act as a surveyor without being registered as a surveyor. [Tr., Vol. II, p. 110]

195. In Kentucky, an individual who performs a boundary survey is required to be a registered land surveyor. [Tr., Vol. II p. 111] An engineer may sign and seal a site plan as part of a plan set, but he may not sign and seal a survey plat unless he is also a registered land surveyor. [Tr., Vol. V, p. 97]

196. Mr. McKinney is not registered as a land surveyor in Kentucky. [Tr., Vol. II, p. 111]

197. Mr. McKinney's reason for signing and sealing this boundary survey, when he is not registered as a land surveyor, is that he was signing a great number of plans, and he signed this boundary survey in error. He indicates that he unintentionally signed

and sealed the survey plat through oversight. [Tr., Vol. III, pp. 109-113] Mr. McKinney also asserts that what he should have done with this survey plat was to remove the phrase "survey plat," as well as the name and address of the surveyor, and used the document as a site plan. [Tr., Vol. V, pp. 98-99] Usually, Mr. McKinney will take a survey plat and reuse it to make the site plan. [Tr., Vol. V, p. 98]

198. Regardless of what Mr. McKinney believes he should have done with this boundary survey, the fact is that Mr. McKinney signed the boundary survey when he is not a licensed land surveyor.

199. Therefore, the Hearing Officer finds that Mr. McKinney is guilty of this charge.

III. Conclusions of Law

1. The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors has jurisdiction over this matter pursuant to KRS 322.180.

2. Pursuant to KRS 13B.090(7), the burden of proof is on the Complainant, the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, to prove the charges against the Respondent, Earl F. McKinney, by a preponderance of the evidence.

3. Based on the foregoing findings of fact, the Hearing Officer concludes that the Board has proved the following charges against Mr. McKinney by a preponderance of the evidence:

a. **Category 1 of charges: Allegations of Making Untruthful Statements Connected with Practice as a Professional Engineer**

- **Charge 1(a) [C.1.c]:** Mr. McKinney made untruthful assertions in

his NCEES annual renewals for 1988 and 1989 by indicating that he was not presently then under investigation by any state, when he knew that he was under investigation by the state of Texas.

- **Charge 1(b) [C.1.d.]:** Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1990, 1991, 1994, and later years, by indicating that his license had not been suspended or revoked by a state when in fact his license had been suspended.

- **Charge 2(a) [C.2.c.]:** In testimony before the Nevada Board of Professional Engineers and Land Surveyors, Mr. McKinney made untruthful statements regarding the number of states in which he was registered as an electrical engineer.

- **Charge 2(b) [C.2.d.]:** In applying for a license as an electrical engineer in California, Mr. McKinney made untruthful statements regarding the number of states in which he was licensed as an electrical engineer.

- **Charge 4 [C.4.]:** In testimony before the Nevada Board of Professional Engineers and Land Surveyors, Mr. McKinney made untruthful statements regarding the number of engineers on his staff.

b. **Category 2 of charges: Allegations of signing and sealing plans inappropriately**

- **Charge 5 [D.2.]:** Between 1993 and 1996, Mr. McKinney customarily signed and sealed engineering plans without having reviewed the plans first.

- **Charge 9 [D.6.]:** Mr. McKinney applied his Kentucky engineering seal to a survey plat of three lots owned by Halray, Inc., in Hopkinsville, Kentucky.

4. Based on the foregoing findings of fact, the Hearing Officer concludes that the Board has not proved the remaining charges (Charges 3, 6, 7, and 8) against Mr. McKinney by a preponderance of the evidence.

5. The Board asserts that the charges that the Board has proved against Mr. McKinney constitute violations of certain provisions of KRS 322.180 and 201 KAR

18:140 for the time period from 1989 through 1997.

6. For the relevant time period, KRS 322.180 provided, in pertinent part:

The board shall have the power to suspend, refuse to renew, or revoke the registration of any registrant, reprimand, place on probation, or fine not to exceed one thousand dollars (\$1,000), any registrant who is found guilty by the board of:

... (2) Any ... misconduct in the practice of engineering . .

;

... (4) Violation of the code of professional practice and conduct which has been adopted by the board.

7. For the relevant time period, "engineering" and the "practice of engineering" were defined in KRS 322.010(3) and (4) as follows:

(3) "Engineering" includes any service or creative work, the adequate performance of which required engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, including engineering works and systems which involve earth materials, water, other liquids, and gases, planning the use of land and waters, and the review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when such professional service requires the application of engineering principles and data. It does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, such as locomotive, stationary, marine, or power plant operators, nor work embraced within the practice of land surveying;

(4) "Practice of engineering" includes all professional services included in subsection (3) of this section, together

with the negotiation or solicitation for engineering work on any project in this state, regardless of whether the persons engaged in that practice are residents of this state or have their principal office or place of business in this state or any other state or country, and regardless of whether they are performing one (1) or all of these duties, or whether they are performing them in person or as the directing heads of offices of organizations[.]

8. For the relevant time period, the code of professional practice and conduct provided, in pertinent part:

201 KAR 18:140. Code of professional practice and conduct.

Section 1. The engineer or land surveyor shall conduct his practice in order to protect the public health, safety, and welfare.

Section 2. The engineer or land surveyor shall issue public statements only in an objective and truthful manner.

... Section 6. The engineer or land surveyor shall perform his services only in areas of his competence.

Section 7. The engineer or land surveyor shall not affix his signature and/or seal to any engineering or land surveying plan, plat, or document dealing with subject matter in which he lacks competence by virtue of education or experience, nor to any such plan, plat, or document not prepared by him or under his direct supervisory control.

... Section 9. The professional engineer or land surveyor shall avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of the profession.

9. The Hearing Officer will examine these statutory and regulatory provisions to determine if any of the charges that have been proved against Mr. McKinney constitute violations of these provisions.

A. Misconduct in the Practice of Engineering

10. The first statutory provision that the Board asserts that Mr. McKinney violated is KRS 322.180(2), which proscribes misconduct in the practice of engineering. The Board asserts that Mr. McKinney violated this provision by the conduct for which Mr. McKinney has been found guilty in Charges 1(a), 1(b), 5, and 9.

11. "Misconduct" is defined in *Black's Law Dictionary*, 7th ed., as "[a] dereliction of duty; unlawful or improper behavior."

12. Therefore, in order for the conduct included in Charges 1(a), 1(b), 5, or 9 to constitute misconduct in the practice of engineering, the conduct must constitute dereliction of duty, or unlawful or improper behavior, by Mr. McKinney in his practice of engineering.

13. The Hearing Officer concludes that the conduct included in Charges 1(a) and 1(b) does not constitute misconduct in the practice of engineering, because Mr. McKinney's conduct of making untruthful assertions in his NCEES annual renewal forms is not strictly within the definition of "practice of engineering" in KRS 322.010(4).

14. The Hearing Officer concludes that the conduct included in Charge 5 constitutes misconduct in the practice of engineering, because Mr. McKinney's conduct of signing and sealing engineering plans without having first reviewed the plans constitutes dereliction of duty and improper behavior in Mr. McKinney's practice of engineering. It was Mr. McKinney's duty, as a professional engineer, to review all engineering plans prior to signing and sealing those plans; Mr. McKinney's failure to perform such a review prior to signing and sealing the plans was both improper and a

dereliction of his duty as a professional engineer.

15. The Hearing Officer concludes that the conduct included in Charge 9 constitutes misconduct in the practice of engineering, because Mr. McKinney's conduct of applying his engineering seal to a survey plat constitutes dereliction of duty and improper behavior in Mr. McKinney's practice of engineering. It was Mr. McKinney's duty, as a professional engineer, to know what document he was signing and sealing, and to know whether he had the authority to sign and seal that document; thus, it was Mr. McKinney's duty, as a professional engineer, to know that his registration as a professional engineer did not authorize him to sign and seal a survey plat, and to recognize that the document that he was signing and sealing was, indeed, a survey plat. Mr. McKinney's failure to recognize that he was inappropriately signing and sealing a survey plat was both improper and a dereliction of his duty as a professional engineer.

B. Violation of the Code of Professional Practice and Conduct

16. The second statutory provision that the Board asserts that Mr. McKinney violated is KRS 322.180(4), which proscribes any violation of the Code of Professional Practice and Conduct, which was adopted by the Board at 201 KAR 18:140. There are several provisions of this Code that the Board asserts that Mr. McKinney violated. The Hearing Officer will address each of those provisions in turn.

B.1. Duty to Protect the Public Health, Safety, and Welfare

17. The Board asserts that Mr. McKinney violated Section 1 of the Code of Professional Practice and Conduct, which requires an engineer to conduct his practice in order to protect the public health, safety, and welfare. The Board asserts that Mr.

McKinney violated this provision by the conduct for which Mr. McKinney has been found guilty in Charges 5 and 9.

18. The Hearing Officer concludes that the conduct included in Charge 5 constitutes a violation of Mr. McKinney's duty to conduct his practice in order to protect the public health, safety, and welfare. By signing and sealing engineering plans without reviewing the plans first, Mr. McKinney was conducting his practice in a manner that would not protect the public health, safety, and welfare. As Mr. McKinney himself testified, the paramount duty of an engineer in reviewing plans is to protect the life and safety of the people who will be occupying the building in question, which should be accomplished by that review of the plans. If an engineer does not review the plans prior to signing and sealing the plans, the engineer cannot fulfill that duty of protecting the public health, safety, and welfare through a review of the plans.

19. The Hearing Officer concludes that the conduct included in Charge 9 does not constitute a violation of Mr. McKinney's duty to conduct his practice in order to protect the public health, safety, and welfare. There is no evidence in the record to indicate that signing and sealing a survey plat inappropriately would violate the engineer's duty to protect the public health, safety, and welfare.

B.2. Duty to Issue Public Statements in an Objective and Truthful Manner

20. The Board asserts that Mr. McKinney violated Section 2 of the Code of Professional Practice and Conduct, which requires an engineer to issue public statements only in an objective and truthful manner. The Board asserts that Mr. McKinney violated this provision by the conduct for which Mr. McKinney has been found guilty in Charges

1(a), 1(b), 2(a), 2(b), and 4.

21. "Truth" means a "fully accurate account of events; factuality." *Black's Law Dictionary*, 7th ed. "Objective" means "[o]f, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions." *Black's Law Dictionary*, 7th ed.

22. The Hearing Officer concludes that the conduct included in Charges 1(a), 1(b), 2(a), 2(b), and 4 constitutes a violation of Mr. McKinney's duty to issue public statements only in an objective and truthful manner. In these charges, Mr. McKinney was found guilty of making untruthful assertions in his NCEES annual renewals, in testimony before the Nevada Board of Professional Engineers, and in his applications for licensure in California. All of these assertions by Mr. McKinney were public assertions, made in records that would be provided to public agencies and at a public hearing. In addition, all of these assertions by Mr. McKinney were not truthful, because they were not accurate; neither were Mr. McKinney's assertions objective, because they were not based on verifiable information that was available to Mr. McKinney. Making these assertions constitutes a violation of this Code provision.

B.3. Duty to Perform Services Only in Areas of Competence

23. The Board asserts that Mr. McKinney violated Section 6 of the Code of Professional Practice and Conduct, which requires an engineer to perform his services only in areas of his competence. The Board asserts that Mr. McKinney violated this provision by the conduct for which Mr. McKinney has been found guilty in Charge 9.

24. The Hearing Officer concludes that the conduct included in Charge 9

constitutes a violation of Mr. McKinney's duty to perform his services only in areas of his competence. In Charge 9, Mr. McKinney was found guilty of applying his engineering seal to a survey plat, when Mr. McKinney was not qualified or registered as a land surveyor. By such action, Mr. McKinney clearly was performing his services in an area outside of the areas of his competence.

B.4. Duty Regarding Affixing Signature and Seal to Engineering Plan

25. The Board asserts that Mr. McKinney violated Section 7 of the Code of Professional Practice and Conduct, which requires an engineer to not affix his signature and/or seal to any plan, plat, or document dealing with subject matter in which the engineer lacks competence by virtue of education or experience, nor to any such plan, plat, or document not prepared by the engineer or under the engineer's direct supervisory control. The Board asserts that Mr. McKinney violated this provision by the conduct for which Mr. McKinney has been found guilty in Charges 5 and 9.

26. The Hearing Officer concludes that the conduct included in Charge 5 does not constitute a violation of the duty articulated in this section of the Code. Although the Hearing Officer has found Mr. McKinney guilty of the conduct in Charge 5 of signing and sealing engineering plans without having reviewed the plans first, there is no finding in that charge that Mr. McKinney affixed his signature and seal to a plan that he was not competent to sign and seal. Neither is there any finding that Mr. McKinney affixed his signature and seal to a plan that was not prepared either by Mr. McKinney or under Mr. McKinney's direct supervisory control.

27. The Hearing Officer concludes that the conduct included in Charge 9

constitutes a violation of Mr. McKinney's duty not to affix his signature and seal to any plan with a subject matter in which the engineer lacks competence. In Charge 9, Mr. McKinney was found guilty of applying his engineering seal to a survey plat, when Mr. McKinney did not have competence in the area of land surveying. This conduct constitutes a violation of this Code provision.

28. The Hearing Officer concludes that Mr. McKinney has not been found guilty of any charge that alleges that Mr. McKinney signed and sealed a document not prepared by Mr. McKinney or under Mr. McKinney's direct supervisory control. Therefore, there is no need to address Mr. McKinney's motion to dismiss the charges concerned with the phrase "direct supervisory control."

B.5. Duty to Avoid Conduct Likely to Discredit or Reflect Unfavorably Upon the Dignity or Honor of the Profession

29. The Board asserts that Mr. McKinney violated Section 9 of the Code of Professional Practice and Conduct, which requires an engineer to avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of the profession. The Board asserts that Mr. McKinney violated this provision by the conduct for which Mr. McKinney has been found guilty in Charges 1(a), 1(b), 5, and 9.

30. The Hearing Officer concludes that the conduct in all of these charges constitutes a violation of Mr. McKinney's duty to avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of the profession. As discussed above, all of the conduct included in these charges was found to violate a statutory provision as well as at least one section of the Code of Professional Practice and Conduct. Conduct that violates these statutory and regulatory provisions will naturally reflect unfavorably

upon the dignity or honor of the profession.

C. Summary of Conclusions of Law Regarding Charges

31. In sum, the Hearing Officer concludes that the charges that have been proved against Mr. McKinney constitute statutory and regulatory violations as follows:

- **Misconduct in the Practice of Engineering [KRS 322.180(2)]**

- **Charge 5:** Between 1993 and 1996, Mr. McKinney customarily signed and sealed engineering plans without having reviewed the plans first.
- **Charge 9:** Mr. McKinney applied his Kentucky engineering seal to a survey plat of three lots owned by Halray, Inc., in Hopkinsville, Kentucky.

- **Violations of the Code of Professional Practice and Conduct [KRS 322.180(4) and 201 KAR 18:140]**

- **Violation of the Duty to Protect the Public Health, Safety, and Welfare [201 KAR 18:140, Section 1]**

- **Charge 5:** Between 1993 and 1996, Mr. McKinney customarily signed and sealed engineering plans without having reviewed the plans first.

- **Violation of the Duty to Issue Public Statements in an Objective and Truthful Manner [201 KAR 18:140, Section 2]**

- **Charge 1(a):** Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1988 and 1989 by indicating that he was not presently then under investigation by any state, when he knew that he was under investigation by the state of Texas.
- **Charge 1(b):** Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1990, 1991, 1994, and later years, by indicating that his license had not been suspended or revoked by a state when in fact his license had been suspended.
- **Charge 2(a):** In testimony before the Nevada Board of Professional Engineers and Land Surveyors, Mr. McKinney made untruthful statements regarding the number of states in which he

was registered as an electrical engineer.

- **Charge 2(b):** In applying for a license as an electrical engineer in California, Mr. McKinney made untruthful statements regarding the number of states in which he was licensed as an electrical engineer.
- **Charge 4:** In testimony before the Nevada Board of Professional Engineers and Land Surveyors, Mr. McKinney made untruthful statements regarding the number of engineers on his staff.
- **Violation of the Duty to Perform Services Only in Areas of Competence [201 KAR 18:140, Section 6]**
- **Charge 9:** Mr. McKinney applied his Kentucky engineering seal to a survey plat of three lots owned by Halray, Inc., in Hopkinsville, Kentucky.
- **Violation of the Duty to Avoid Conduct Likely to Discredit or Reflect Unfavorably Upon the Dignity or Honor of the Profession [201 KAR 18:140, Section 9]**
- **Charge 1(a):** Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1988 and 1989 by indicating that he was not presently then under investigation by any state, when he knew that he was under investigation by the state of Texas.
- **Charge 1(b):** Mr. McKinney made untruthful assertions in his NCEES annual renewals for 1990, 1991, 1994, and later years, but indicating that his license had not been suspended or revoked by a state when in fact his license had been suspended.
- **Charge 5:** Between 1993 and 1996, Mr. McKinney customarily signed and sealed engineering plans without having reviewed the plans first.
- **Charge 9:** Mr. McKinney applied his Kentucky engineering seal to a survey plat of three lots owned by Halray, Inc., in Hopkinsville, Kentucky.

D. Motion to Dismiss Charges Concerning Other States

32. Mr. McKinney has submitted a Motion for Directed Verdict, which is

essentially a motion to dismiss, regarding any charges that concern a specific act that took place in another state or that concern Mr. McKinney's signing and sealing plans for projects that were located in other states. Although Mr. McKinney is not very specific about the exact charges that he is referencing in this motion, the Hearing Officer concludes that those charges are the charges that concern Mr. McKinney's Nevada testimony [Charges 2(a), 2(b), and 4] and the charge that concerns Mr. McKinney signing and sealing engineering plans without reviewing the plans first [Charge 5].⁷

33. Mr. McKinney's first argument in support of this motion is an argument of statutory construction, in which he asserts that the language of KRS 322.010(4) indicates that the legislature intended for the Board to regulate the practice of engineering only within the Commonwealth of Kentucky. The Hearing Officer will not discuss this argument in any detail, because this argument has already been addressed and rejected by the Kentucky Court of Appeals in *McKinney v. Kentucky State Board of Registration for Professional Engineers and Land Surveyors*, Ky. App., 93-CA-001561-MR, which is an earlier version of this same dispute between the parties.

In that decision, the Court of Appeals stated:

States can exercise their police power in matters affecting the safety, welfare, comforts and conveniences of their citizens. . . . And, states have the authority to regulate occupations and professions where the safety and welfare of the public are concerned. . . . Therefore, even if [Mr. McKinney] was

⁷The Hearing Officer notes that, while 98-99% of the engineering plans connected with Charge 5 were for projects that were located in states other than Kentucky, 1-2% of the engineering plans connected with this charge were for projects that were located within Kentucky. Even though the number of engineering plans for projects in Kentucky is a relatively small number, the fact remains that Mr. McKinney has been found guilty of signing and sealing those plans without first reviewing the plans.

approving only projects located outside the state, if such approval involved unsafe projects, Kentucky has an obligation to protect not only its citizens, but to prevent unsafe actions by its citizens, if such actions affect out-of-state citizens.

Accordingly, we hold that under the language of KRS 322.080 and KRS 322.010(3)(4), the Board has the authority to initiate a disciplinary action against [Mr. McKinney] for his practice of engineering as it related to projects outside the state of Kentucky.

Id. at p. 8 [citations omitted]. Thus, the Hearing Officer concludes that the Court of Appeals has already decided this issue regarding the interpretation to be given to the Board's statutory authority to bring these charges against Mr. McKinney. [For the Board's easy reference, the Hearing Officer is attaching a copy of this decision by the Court of Appeals as Attachment 2.]

34. Mr. McKinney's second argument in support of this motion is that the recent Kentucky Supreme Court case of *Union Underwear Co., Inc. v. Barnhart*, Ky., 50 S.W.3d 188 (2001), mandates the result requested by Mr. McKinney. The Hearing Officer disagrees.

In *Barnhart*, the Kentucky Supreme Court determined that the Kentucky Civil Rights Act cannot be applied outside Kentucky. The Court found that the only connection to Kentucky of this lawsuit alleging age discrimination was that the employer had its headquarters in Kentucky; the employee had no connection with Kentucky, and the alleged discrimination occurred either in South Carolina or Alabama.

The Hearing Officer concludes that the *Barnhart* case is distinguishable from this instant case involving the Board and Mr. McKinney. In the *Barnhart* case, a private

individual was suing a private company for alleged discrimination. In the instant case, a state agency that regulates the practice of engineering is bringing an action against one of the individuals whom it has licensed and whose license it has the authority to regulate. In the *Barnhart* case, the private individual had no connection with Kentucky, and the alleged discrimination did not occur in Kentucky. In the instant case, both Mr. McKinney and the Board are connected to Kentucky; Mr. McKinney's main office is located in Lexington, Kentucky, and the Board is a Kentucky state agency. In the *Barnhart* case, the private individual was suing the private corporation to remedy alleged misconduct performed by the private corporation against the private individual. In the instant case, the Board is exercising its duty to the public to ensure that individuals who are licensed to practice engineering in Kentucky meet the requisite requirements and standards of professional engineers in Kentucky.

The Hearing Officer concludes that, because there are so many differences between the *Barnhart* case and the instant case, the holding in the *Barnhart* case is not applicable to the charges brought against Mr. McKinney by the Board in the instant case.

For all of these reasons, the Hearing Officer concludes that Mr. McKinney's motion to dismiss these charges should be and is denied.

E. Assessment of Appropriate Sanction

35. In determining the appropriate sanction for the charges for which Mr. McKinney has been found guilty, the Hearing Officer has considered the nature of the charges for which Mr. McKinney has been found guilty. Contrary to Mr. McKinney's assertion that many of these charges are "form over substance," the Hearing Officer

concludes that the charges for which Mr. McKinney has been found guilty are of a very serious nature and go to the very essence of practicing as a professional engineer.

36. The Hearing Officer has also considered the number of charges for which Mr. McKinney has been found guilty. This is not a situation in which an individual has been found guilty of an isolated, non-recurring incident. The charges for which Mr. McKinney has been found guilty often involve recurring incidents of the same type of conduct.

37. In addition, the Hearing Officer has considered the fact that some of the charges for which Mr. McKinney has been found guilty in this case are similar to charges for which Mr. McKinney was found guilty in previous proceedings in other states. Specifically, the Hearing Officer notes that:

- Mr. McKinney was found guilty in 1989 in Texas of erroneously sealing and stamping outside his discipline on two occasions with respect to surveys;
- Mr. McKinney was found guilty in 1989 in Texas of representing to the Board in a letter that he had Texas licensed engineers on his staff who were proficient in civil and structural engineering, and that he had a qualified soils investigation analyst on his staff, but, during his testimony, not remembering who those staff members were and not wanting time to determine the answer; and
- Mr. McKinney was found guilty in 1997 in Nevada of stamping and signing plans that involved electrical engineering when Mr. McKinney was not licensed to practice electrical engineering in Nevada.

The Hearing Officer concludes that the repeat nature of the similar charges in the

instant case indicates that Mr. McKinney has previously not understood the significance of the charges for which he has been found guilty.

38. The Hearing Officer concludes that the serious nature of the charges, the number of the charges, and the repeat nature of some of the charges for which Mr. McKinney has been found guilty all combine to indicate that Mr. McKinney's license as a professional engineer should be suspended for five (5) years, and that Mr. McKinney should be required to pay a fine of \$1,000. In addition, the repeat nature of some of the charges, and Mr. McKinney's attitude that some of these matters are not very important, indicate that Mr. McKinney should be required to receive Board-approved training regarding the Code of Professional Practice and Conduct before his license is reinstated.

IV. Recommended Order

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer recommends that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors issue an Order that finds the Respondent, Earl F. McKinney, guilty of violating KRS 322.180 in the manner outlined above.

The Hearing Officer also recommends that the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors issue an Order as follows:

1. Mr. McKinney's license as a professional engineer shall be suspended for a period of five (5) years, from the date on which the Board's Order is served upon Mr. McKinney.
2. Mr. McKinney shall pay a fine to the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors in the amount of \$1,000.00.

3. Mr. McKinney's license as a professional engineer shall not be reinstated until Mr. McKinney requests reinstatement of his license and demonstrates that he has paid the assessed fine in full and that he has completed 12 hours of Board-approved training regarding the Code of Professional Practice and Conduct.

V. Notice of Exceptions and Appeal Rights

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Kentucky State Board of Registration for Professional Engineers and Land Surveyors.

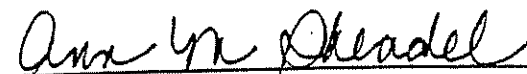
The final Order of the Kentucky State Board of Registration for Professional Engineers and Land Surveyors may be appealed pursuant to KRS 13B.140(1), which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean.

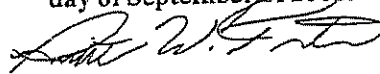
that a summons must be served upon filing an appeal in Circuit Court.

SO RECOMMENDED this 3rd day of May, 2002.



Ann M. Sheadel
Chief Hearing Officer
Division of Administrative Hearings
Office of the Attorney General
1024 Capital Center Drive, Ste. 200
Frankfort, Kentucky 40601-8204
(502) 696-5442
(502) 573-8315 - FAX

I, Robert W. Fentress, do hereby certify I am the Assistant Executive Director of the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, that I am the official custodian of the records of said Board, and the documents attached hereto are true and correct copies of official records maintained by this agency, this the 6th day of September of 2005.



Robert W. Fentress, PLS

COMMONWEALTH OF KENTUCKY

KENTUCKY STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

ADMINISTRATIVE ACTION NO. 98-KBELS-0163

KENTUCKY STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS PETITIONER

VS: FINAL ORDER

EARL F. McKINNEY, PE #5580

RESPONDENT

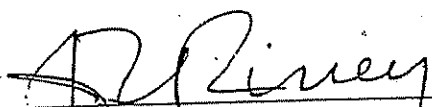
The Board having considered the entire Record in this proceeding, including, but not limited to various motions by the parties, the Trial Transcript, exhibits introduced into evidence, and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, and being sufficiently advised, it is the FINAL ORDER of this Board - that the Hearing Officer's Findings of Fact and Conclusions of Law are ADOPTED as a part of this Board's Final Order as if fully set out herein. It is further ORDERED that Earl F. McKinney's license to practice engineering in the Commonwealth of Kentucky be REVOKED.

This Final Order of the Kentucky State Board of Licensures for Professional Engineers and Land Surveyors may be appealed pursuant to KRS 13B.140(1), which states:

"All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

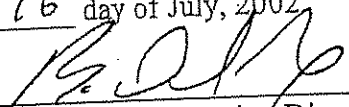
Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal buy an original action."

WITNESS my hand this the 11 day of July, 2002.



JAMES B. RINEY, PE, PLS, CHAIRMAN
KENTUCKY STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

ENTERED, this the 16 day of July, 2002



B. David Cox, Executive Director

**BEFORE THE TENNESSEE STATE BOARD OF
ARCHITECTURAL AND ENGINEERING EXAMINERS**

IN THE MATTER OF:

EARL F. McKINNEY, P.E. #12023
A&E Designers
2020 Liberty Road, Suite 105
Lexington, Kentucky 40505

)
)
) **Case Nos. L97-AEL-RBS-8436**
) **L02-AEL-RBS-2002103161**
)
)

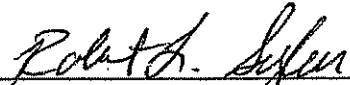
FINAL ORDER

THIS CAUSE came to be heard before the Tennessee State Board of Architectural and Engineering Examiners in Nashville, Tennessee on September 19, 2003. The Respondent, Earl F. McKinney, presented a signed Consent Order, dated September 2, 2003, which was **ACCEPTED** by the Board.

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that the aforementioned Consent Order, attached hereto and incorporated herein by reference, shall become the Final Order of the Board in this cause.

This Final Order shall become effective immediately.

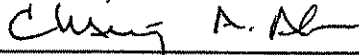
Entered this 19th day of September, 2003.


Robert L. Sylar, P.E., Chair
Tennessee State Board of Architectural and
Engineering Examiners

RECEIVED
2003 OCT 12 PM 2:56
ARCHITECTS AND
ENGINEERS BOARD

EXHIBIT N

APPROVED:



Christy A. Allen
Chief Counsel for Regulatory Boards, Fire Prevention
and Administration
BPR #015967
Department of Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, Tennessee 37243-0569
(615) 741-3072
FAX: (615) 741-4000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order and Consent Order has been mailed via certified mail, return receipt requested, to the Respondent and a copy has been mailed to Respondent's counsel on this 14th day of October, 2003.



Christy A. Allen
Chief Counsel for Regulatory Boards, Fire
Prevention and Administration

**BEFORE THE TENNESSEE STATE BOARD OF
ARCHITECTURAL AND ENGINEERING EXAMINERS**

RECEIVED

SEP 10 2003

DIV. OF REGULATION & COMPLIANCE
LEGAL OFFICE

IN THE MATTER OF:

**EARL F. MCKINNEY, P.E. #12023
A & E Designers
2020 Liberty Road, Suite 105
Lexington, Kentucky 40505**

**Case Nos. L97-AEL-RBS-8436
L02-AEL-RBS-2002103161**

CONSENT ORDER

WHEREAS, Respondent, Earl F. McKinney, executes this Consent Order for the purpose of avoiding further administrative action with respect to this cause;

WHEREAS, Respondent was at all times pertinent hereto registered by the Tennessee State Board of Architectural and Engineering Examiners (hereinafter "Board") as an engineer in the State of Tennessee, having been granted certificate of registration number 12023 by the Board;

WHEREAS, Respondent admits that on or about March 14, 1997, the Nevada Board of Registered Professional Engineers and Land Surveyors ("Nevada Board") suspended his registration as a mechanical engineer in the State of Nevada for a period of two (2) years for stamping and signing plans outside of his discipline;

WHEREAS, the Nevada Board stayed Respondent's two (2)-year suspension, instead placing Respondent on a period of probation for two (2) years;

WHEREAS, in connection with the Nevada Board's action, Respondent agreed to submit quarterly reports and pay a fine of three thousand five hundred dollars (\$3,500.00);

WHEREAS, Respondent admits that on or about August 23, 2002, the California Board for Professional Engineers and Land Surveyors ("California Board") suspended his license as a mechanical engineer for two (2) years in part for signing and stamping electrical engineering drawings and otherwise engaging in the practice of electrical engineering in the State of California when he did not have a current license as an electrical engineer;

WHEREAS, the California Board stayed Respondent's two (2)-year suspension, instead placing Respondent on a period of probation for two (2) years;

WHEREAS, in connection with the California Board's action, Respondent agreed to submit quarterly reports, successfully pass a course in professional ethics and reimburse the California Board the amount of nine thousand four hundred fifty-eight dollars (\$9,458.00) for the cost of investigation and prosecution;

WHEREAS, Respondent admits that the suspension of his license in another jurisdiction constitutes grounds for the suspension or revocation of his certificate of registration as an engineer in the State of Tennessee pursuant to Tenn. Code Ann. § 62-2-308(a)(1)(F) and Tenn. Comp. R. & Regs. 0120-2-.07(5)(b) [MISCONDUCT];

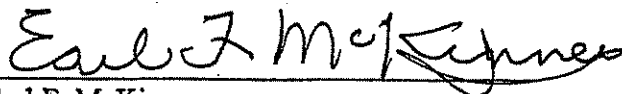
NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

1. Respondent's certificate of registration number 12023 as an engineer in the State of Tennessee shall be suspended for a period of two (2) years. This suspension shall become effective immediately upon the effective date of the Board's Final Order incorporating this Consent Order.
2. The two (2) year suspension shall be stayed; Respondent shall be placed on probation for a period of two (2) years during which time he shall file

quarterly reports with the Board detailing all projects in which he is involved in the State of Tennessee.

3. Respondent shall take and pass, with a score of eighty percent (80%) or better, the Board's law and rules examination within thirty (30) days after the effective date of the Board's Final order incorporating this Consent Order.
4. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order and the Final Order of the Board incorporating this Consent Order.

ENTERED this the 2 day of SEPT, 2003.



Earl F. McKinney
Respondent

APPROVED:



Christy A. Allen, BPR No. 015967
Chief Counsel
Divisions of Regulatory Boards, Fire Prevention and
Administration
Department of Commerce and Insurance
Office of Legal Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, Tennessee 37243-0569
(615) 741-3072
FAX (615) 741-4000

1 **BEFORE THE ARIZONA STATE BOARD OF**
2 **TECHNICAL REGISTRATION**

3 In the Matter of:)

No. 00F-C99075-BTR

4 **EARL FREDRICK McKINNEY**)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

5 Holder of License No. 29966)

6 For the Practice of Engineering (Electrical))

7 Holder of License No. 12765)

For the Practice of Engineering (Mechanical))

In the State of Arizona)

8
9 On June 2, 2000, the Arizona State Board of Technical Registration ("Board") having
10 reviewed the matter, including the Recommended Decision and Order of the Administrative Law
11 Judge (Administrative Law Judge's Recommended Decision, attached hereto), takes the
12 following action:

13 1. Adopts Findings of Fact, paragraphs 1 through 10 of the Administrative Law Judge's
14 Recommended Decision and incorporates the same by reference.

15 2. Adopts Conclusions of Law, paragraphs 1 through 3 of the Administrative Law
16 Judge's Recommended Decision and incorporates the same by reference.

17 **Order**

18 Based on the Board's adoption of the Findings of Fact and Conclusions of Law, the
19 Board issues the following Order:

20 1. **PROBATION:** Commencing on the effective date of this order, Respondent's
21 mechanical engineering and electrical engineering license shall be placed on a period of
22 disciplinary probation for 120 days.

23 2. **ADMINISTRATIVE PENALTY:** Within thirty (30) days from the effective date of
24 the Order, Respondent shall pay an administrative penalty of one hundred fifty dollars (\$150.00)
25 by certified check or money order to the Board and made payable to the Treasurer of Arizona.

EXHIBIT O

1 3. COSTS: Respondent shall pay the costs associated with the Board's investigation of
2 case No. C99-075. The costs are one thousand, one hundred fifty-eight dollars and seventy-five
3 cents (\$1,158.75). Respondent shall pay costs within thirty (30) days from the effective date of
4 this Order by certified check or money order, payable to the Arizona State Board of Technical
5 Registration.

6 4. All parties are advised that they may file a motion for rehearing pursuant to A.R.S. §
7 41-1092.09(B) and A.A.C. R4-30-126 within thirty (30) days after service of the administrative
8 decision. The filing of the timely motion for rehearing is a prerequisite of judicial review.

9 Dated this 6th day of June, 2000.

10 Gregory M. Tuttle
11 Gregory M. Tuttle, Chair
12 Arizona State Board of Technical Registration

13 Copy of the foregoing mailed by certified mail
14 No. Z 235 546 285
this 6th day of June, 2000 to:

15 Earl F. McKinney
16 3171 Roxburg Drive
Lexington, KY 40503

17 Copy of the foregoing mailed
18 this 6th day of June, 2000 to:

19 Peter Ostermiller, Attorney at Law
20 Kentucky Home Life Building, Suite 500
239 South Fifth Street
Louisville, KY 40202

21 Patti J. Shelton
22 Assistant Attorney General
1275 West Washington, CIV/LES
Phoenix, AZ 85007

23 ///

24 ///

25 ///

///

///

Z 235 546 285

1 Copy of the foregoing hand-delivered
2 this 6th day of June, 2000 to:

3 Office of Administrative Hearings
4 1400 West Washington, Suite 101
5 Phoenix, AZ 85007

6 *Sylvia Bates*

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Earl F. McKinney
3171 Roxburg Drive
Lexington, KY 40503

PS Form 3800, April 1995

Certified Fee	/
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
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<i>Findings of Facts...</i>	

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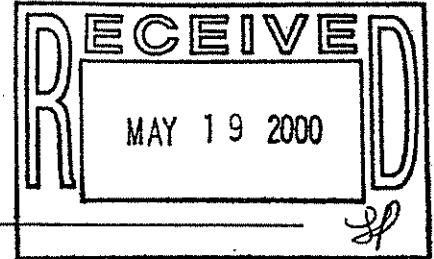
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

EARL FREDRICK McKINNEY
Holder of License No. 29966
For the Practice of Engineering (Electrical)
Holder of License No. 12765
For the Practice of Engineering
(Mechanical)
In the State of Arizona

No. 00F-C99075-BTR

RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE



HEARING: May 12, 2000

APPEARANCES: The Arizona Board of Technical Registration ("Complainant") was represented by Assistant Attorney General, Patti Shelton and Earl McKinney ("Respondent") was represented by his attorney, Peter Ostermiller. Mr. Ostermiller obtained *pro hac vice* status from the Maricopa Superior Court, thereby allowing him to represent Respondent at the instant hearing.

ADMINISTRATIVE LAW JUDGE: Mark A. Silver

Evidence and testimony were presented and, based upon the entire record in this matter, the following Findings of Fact, Conclusions of Law, and Recommended Order are made:

FINDINGS OF FACT

1. Respondent is the holder of license no. 12765, issued by Complainant on October 10, 1979. This license allows Respondent to engage in the business of mechanical engineering in the State of Arizona.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 2. Respondent is also the holder of license no. 29966, issued by Complainant on
2 February 6, 1996. This license allows Respondent to engage in the business of
3 electrical engineering in the State of Arizona.

4
5 3. Complainant alleges certain misrepresentations in the license application
6 submitted by Respondent in order to obtain the above-described electrical engineering
7 license and these allegations are discussed in the findings below.

8
9 4. At the outset of the scheduled hearing, the parties entered a stipulation onto
10 the record that the following facts are true, accurate, and uncontested:

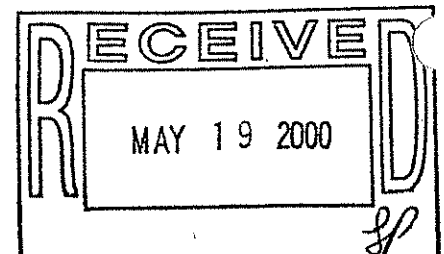
11
12 a. On December 20, 1989 the Texas Board of Registration for Professional
13 Engineers ("Texas"), in case no. D-27, issued an Order against Respondent's
14 engineering license. The Order in that case imposed a three year suspension against
15 Respondent's license in that State with the further provision that said three year period
16 would effectively be a period of probation (not suspension).

17 b. As a direct result of the action by Texas, the appropriate licensing agencies in
18 six other States; namely New York, Nevada, Vermont, Wisconsin, Louisiana, and
19 Delaware also entered disciplinary sanctions against Respondent's licenses in those
20 States.

21 c. On December 21, 1990 New York issued a two year stayed suspension of
22 Respondent's engineering registration and probation for a period of two years.

23 d. On March 29, 1991 Nevada issued a period of probation on Respondent's
24 engineering registration for the same period as that imposed by Texas and ordered the
25 payment of a specified administrative penalty.

26 e. On May 23, 1991 Vermont issued an order that Respondent would be
27 restricted to practicing engineering in that State while under the direct supervision of
28 another professional engineer licensed in Vermont. This restriction was placed in effect
29 until December 20, 1992.
30



1 f. On November 15, 1991 Wisconsin issued a stayed suspension against
2 Respondent's engineering registration. The suspension was deemed to be stayed as
3 long as Respondent complied with all of the requirements of his Texas imposed
4 probation.

5 g. On November 14, 1991 Louisiana issued a suspension of Respondent's
6 engineering registration until December 20, 1992.

7 h. On October 13, 1992 Delaware suspended Respondent's engineering license
8 until December 1992.

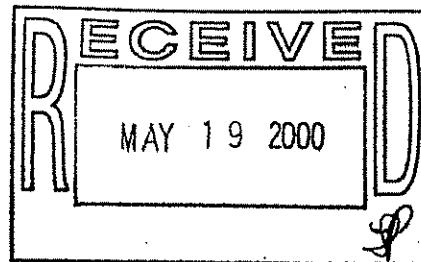
9 i. The sole basis for the sanctions in New York, Nevada, Vermont, Wisconsin,
10 Louisiana, and Delaware was the fact that Respondent's registration as an engineer
11 had been the subject of a disciplinary sanction in Texas.
12

13 5. Uncontroverted evidence of record established that notwithstanding the
14 above described disciplinary sanctions imposed by seven (7) States, Respondent
15 answered in the negative to the following two questions contained on his 1995
16 application form for electrical engineer registration in Arizona:
17

18 a. Has your registration ever been suspended or revoked in any state or
19 jurisdiction?

20 b. Have you ever been the subject of professional disciplinary action or do you
21 now have such action pending against you in any state or other jurisdiction?
22

23 6. Evidence of record demonstrated that Respondent believed, albeit
24 erroneously, that at the time he completed the application at issue herein he did not
25 have to answer "yes" to the above-described questions, due to the fact that not only the
26 Texas disciplinary sanction but all of the sanctions from the other States had been
27 terminated. While this may serve to explain Respondent's actions, it does not serve to
28 excuse same.
29
30

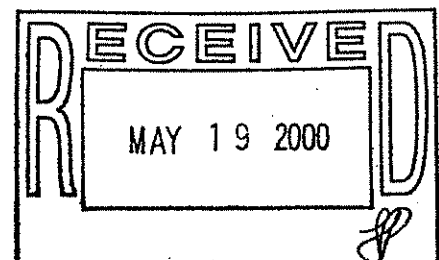


1
2 7. It should be noted that Respondent is 66 years old, has been an engineer for
3 over forty (40) years, and is licensed as an engineer in 49 states. It is obvious that
4 Respondent is an intelligent individual. Thus, it is extremely difficult to comprehend why
5 he could not understand that the questions at issue herein used the key word "ever" in
6 the inquiry referable to prior suspensions, revocations or professional disciplinary
7 action.

8
9 8. The evidence of record established that Respondent's failure to answer in the
10 affirmative to the questions described in Finding of Fact 6 (a) and 6 (b) constitutes a
11 material misrepresentation, constituting violations of the applicable charged sections of
12 the State's Board of Technical Registration laws.

13
14 9. Notwithstanding the finding of violations herein, by way of mitigation it should
15 be noted that there was no showing that Respondent had been involved in any license
16 disciplinary problems, other than the one that occurred in Texas and in the other States
17 as a direct result of the Texas action. Moreover, the violations at issue herein do not
18 involve either health, safety, or any harm to the citizenry of this State.

19
20 10. By further way of mitigation it should also be noted that Respondent averred
21 that he has learned his lesson regarding his inability to understand what is needed on
22 any applications for licensure or renewal and has already taken constructive measures
23 to assure that this type of problem does not occur again in the future. Respondent
24 testified that since he became aware of the problem in the instant case, he now passes
25 all of his application forms through his attorneys before submitting same to the
26 appropriate licensing agency.
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CONCLUSIONS OF LAW

1. This matter is within the jurisdiction of the Arizona Board of Technical Registration pursuant to A.R.S. § 32-106, et seq.

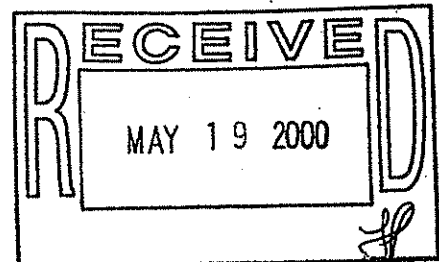
2. A.R.S. § 32-128 allows the Arizona Board of Technical Registration to take disciplinary action against the holder of a certificate of registration including revocation, suspension, imposition of an administrative penalty, probation, written reprimand, and a requirement for payment of the reasonable costs incurred by the Arizona Board of Technical Registration in conducting the investigation and for the administrative hearing.

3. The evidence of record established that Respondent violated the provisions of A.R.S. §§ 32-122.01A (1), 32-128B (1), 32-145 (5), 32-128B (4); namely A.A.C. R4-30-301A(1) and A.A.C. R4-30-101(10)(d)(e).

RECOMMENDED ORDER

In view of the foregoing, it is recommended, commencing on the effective date of the Order entered in this matter, that Respondent's mechanical engineering and electrical engineering license shall be placed on a period of disciplinary probation for 120 days.

It is further recommended, that on or before thirty (30) days following the effective date of the Order entered in this matter, Respondent shall be required to pay the total sum of \$150.00 to the Complainant as an administrative penalty and shall reimburse Complainant for all costs incurred in conducting the investigation into this matter and the costs of the instant administrative hearing.



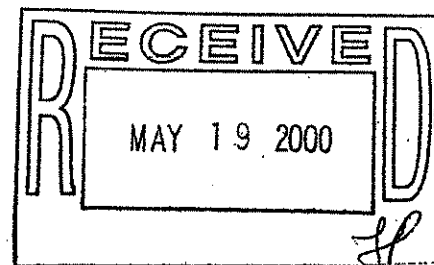
1
2
3 Done this day, May 17, 2000

4
5 M. Silver
6 Mark A. Silver
7 Administrative Law Judge

8
9 Original transmitted by mail this
10 19 day of May, 2000, to:

11
12 Board of Technical Registration
13 Ronald W. Dalrymple
14 1990 West Camelback Road, Suite.406
15 Phoenix, AZ 85015

16 By Chris Crawford Thomson



BEFORE THE ARIZONA STATE BOARD OF
TECHNICAL REGISTRATION

In the Matter of)	No. 00F-C99075-BTR
)	
EARL FREDRICK McKINNEY)	
Holder of Registration No. 29966)	
For the Practice of Electrical Engineer)	
Holder of Registration No. 12765)	
For the Practice of Mechanical Engineer)	
In the State of Arizona)	

RESPONDENT'S MOTION FOR REHEARING OR REVIEW

Comes the Respondent, Earl Fredrick McKinney, by Counsel, pursuant to A.R.S. Sec. 41-1092.09(B) and A.A.C. R4-30-126, and moves this Board for a rehearing or review of this proceeding on the following grounds.

INTRODUCTION AND SUMMARY OF MOTION

This proceeding concerns a 1995 electrical engineer's license application submitted by Mr. McKinney. At issue is the completeness and accuracy of Mr. McKinney's response to the question concerning whether his engineering license in any other jurisdiction had been suspended or revoked or whether he had been the subject of any disciplinary action in any other jurisdiction. Mr. McKinney acknowledges that it is important for accurate forms to be submitted to this Board regarding an application for an engineer's license. However, Mr. McKinney respectfully submits that the facts of the present case and the findings made by the Administrative Law Judge, do not support the conclusion of law of misrepresentation.

In reviewing this case, it is important to not only identify the matters at issue, but also to recognize what this case does not concern. This case does not concern any issues of technical competence, knowledge or skill of Mr. McKinney. No allegation was made by the Board in the

a three-year probated suspension of his Texas engineer's registration. However, Mr. McKinney's Texas engineer's license always remained in full force and effect, and Mr. McKinney satisfied all terms of that probation.

After that Texas action, a number of jurisdictions took reciprocal action concerning Mr. McKinney's engineer's license in those jurisdictions. In particular, the Complaint, in numerical paragraphs 5 to 10, set out the action taken by the respective Boards in New York, Nevada, Vermont, Wisconsin, Louisiana, and Delaware. Although the particular reciprocal action taken by each state varied somewhat, the reciprocal actions taken by the individual states terminated, by their terms, on or before the expiration of the three-year probationary period from the 1989 Texas Board Action.

Several years thereafter, in September of 1995, Mr. McKinney submitted an application to this Board for an electrical engineer's registration. The application asked in questions 2 and 3 whether Mr. McKinney's engineer's registration had ever been "suspended or revoked" in any state, whether he had ever been the subject of any professional disciplinary action, or whether he has any action pending against him in any state or other jurisdiction.

The Complaint states that Mr. McKinney's response to questions 2 and 3 on that September 1995 application, was "no." The Complaint further contends that Mr. McKinney's answers in the negative to those two questions constituted the presentation of "false information" to this Board regarding a registration application, and that such misrepresentation establishes that Mr. McKinney lacks the requisite "good moral character and repute" as required by the applicable Arizona statute and regulations.

Mr. McKinney filed an Answer to the allegations of the Complaint. In particular, Mr. McKinney noted in his Answer that his responses to the two questions at issue from the September

1995 Application were based on his good faith conduct, without the benefit of counsel, and were based on his good faith understanding of the legal effect, if any, of the previous administrative action in Texas, and any collateral effect, if any, from any other jurisdiction.

Following a number of pretrial steps and pretrial proceedings, including certain pretrial conferences, the matter was heard by an Administrative Law Judge and an evidentiary hearing on May 12, 2000.

At the beginning of the May 12, 2000 hearing, the Board and Mr. McKinney stipulated as to the authenticity of the documents from Texas and the other jurisdictions reflecting the particular administrative action taken in those jurisdictions as set out in the Complaint. The parties stipulated that the sole basis for the actions taken in those other jurisdictions was the Texas Board action from 1989.

At the May 12, 2000 hearing, Mr. McKinney testified concerning the circumstances surrounding his completion and submission of the September 1995 Board application. In particular, as the Administrative Law Judge noted in numerical paragraph 6 of its Findings of Fact, the evidence demonstrated that Mr. McKinney believed, "albeit erroneously," that at the time he completed that 1995 application, he did not have to answer "yes" to the questions because the Texas disciplinary action from 1989 and all of the other actions from the other jurisdictions had been terminated by the time of the completion of that 1995 application. Additionally, as Mr. McKinney testified, the Texas action had been a probated resolution in which Mr. McKinney's engineer's license was not, in fact, suspended. The Administrative Law Judge stated in numerical paragraph 6 of its Findings that Mr. McKinney's belief as to how the questions should be answered may serve to explain his actions, but does not excuse his actions.

As Mr. McKinney testified, and as the Administrative Law Judge found in numerical paragraph 10 of its Findings of Fact, Mr. McKinney has recognized his shortcoming regarding his independent completion of such renewal applications and has taken appropriate and constructive measures to insure that such similar problems do not occur in the future. As Mr. McKinney testified, and as the Administrative Law Judge noted, Mr. McKinney now has such application forms submitted to his attorney before the applications are submitted to the appropriate licensing authority.

On June 2, 2000, this Board adopted the Findings of Fact and Conclusions of Law of the Administrative Law Judge, and imposed the probated resolution recommended by the Administrative Law Judge in its Recommended Decision.

DISCUSSION

I. ACTIONS OF MR. MCKINNEY AS FOUND BY THE ADMINISTRATIVE LAW JUDGE, AND AS ADOPTED BY THIS BOARD, DO NOT SUPPORT A DETERMINATION THAT MR. MCKINNEY ENGAGED IN INTENTIONALLY FRAUDULENT OR DECEITFUL CONDUCT

Based on the Findings made by the Administrative Law Judge in the present case, and in particular, the Findings contained in numerical paragraphs 6(a) and 6(b), Mr. McKinney respectfully submits that his responses to the two questions on the 1995 application are not reflective of the intentional fraud or deceit as set out in the Complaint.

In particular, the subject matter of the two questions concerned matters of public record, i.e., the Texas Board proceeding and the reciprocal proceedings from a number of other jurisdictions. All of these matters were of public record, readily available to any person requesting such information, as reflected by the Arizona Board personnel obtaining copies of those matters from the various state Boards. The open and public nature of the subject matter of those two questions,

and Mr. McKinney's response to those questions, is not consistent with allegations that Mr. McKinney engaged in any intentional fraud or misrepresentation. Fraud and misrepresentation, by definition, reflect a person's attempt to not reveal and to keep secret certain information. If the matters at issue in the present case were only contained in correspondence maintained only in Mr. McKinney's office in Mr. McKinney's files, and Mr. McKinney failed to reveal that information to this Board, an implication could be made that Mr. McKinney was deliberately keeping some information from this Board. However, that is simply not the present case before this Board. In the present case, the matters at issue were never under Mr. McKinney's control. The Board matters were of public record with the applicable Boards. Mr. McKinney's failure to respond in the positive to the two questions from 1995 reflected his good faith misunderstanding of his reporting requirement, and did not reflect any intention on his part to engage in any fraud or misrepresentation in submitting that application. It would be illogical, and did not occur in the present case, for Mr. McKinney to engage in fraud regarding matters of public record.

In the present case, the 1989 Texas Board action had been a probated suspension and Mr. McKinney's Texas engineer's license remained in full force and effect at all times. Mr. McKinney completed that three year probated time period. Similarly, the other jurisdictions which imposed a reciprocal resolution based on the Texas action, at most, provided for reciprocal action which concluded during that same three year time period.

Mr. McKinney believed that his application answers, under the particular facts as he understood them to be they were in 1995, were correct. Mr. McKinney completed that application without the benefit of counsel, and without any third person reviewing the application before same was submitted to this Board. The issues regarding a probated suspension represented a gray area.

As a matter of law, a probated or stayed suspension is not a suspension. Case law instructive on this issue regarding a suspension and a probation are reflected in administrative and other law of Arizona Courts. For example, in McCormick v. Industrial Commission of Arizona, 664 P.2d 699, 701 (Ariz. App. 1983), the Arizona Court of Appeals noted that a suspension was a "temporary cessation" and not a permanent matter. And, in State v. Muldoon, 767 P.2d 16, 19 (Ariz. 1988), the Arizona Supreme Court noted that probation allows a person a period of time to perform certain conditions and to thereby avoid imposition of a formal sentence. Lastly, the characterization of probation was reflected in an article written by Gretchen Aliabadi, Assistant Attorney General, Arizona Attorney General's Office, entitled "Discipline By Other Jurisdictions May Affect Your Arizona Registration" in this Board's news letter publication in May of 1999. Ms. Aliabadi, in the section entitled "Disciplinary Action Less Than Suspension," gives probation as one of the examples of discipline less than suspension. This case law is reflective of the good faith basis of Mr. McKinney's belief that the probated action from the Texas Board was neither a suspension nor a revocation of his license which would have called for a positive response to the question at issue in the 1995 license application.

Mr. McKinney acknowledges that the filing of accurate applications with this Board is an important issue. The particular circumstances which existed at the time of Mr. McKinney's completion of the application from 1995 have been subsequently addressed by Mr. McKinney to avoid any recurrence of the confusion or misunderstanding by Mr. McKinney as to the accuracy of the responses to the application questions at issue.

Mr. McKinney respectfully requests that this Board amend its Findings of Fact contained in numerical paragraph 8 of the Findings of Fact of the Administrative Law Judge to

reflect that any misrepresentation by Mr. McKinney on the application was "not intentionally fraudulent or deceitful."

Mr. McKinney agrees and acknowledges that the 120-day probation plus the payment of costs is an appropriate and just resolution of this proceeding. However, Mr. McKinney does take issue with any ultimate conclusion that Mr. McKinney engaged in any intentionally fraudulent or deceitful conduct.

CONCLUSION

Based on the foregoing, Mr. McKinney respectfully requests that he be granted a rehearing and review in this administrative proceeding to grant the relief requested in this Motion.

Respectfully submitted,

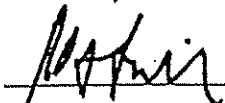


Peter L. Ostermiller
500 Kentucky Home Life Bldg.
239 South Fifth Street
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(502) 583-4881
Attorney for Earl F. McKinney

COPY of the foregoing
mailed this 3rd day of
July, 2000, to:

Office of Administrative Hearings
1400 West Washington
Phoenix, AR 85007

Patti J. Shelton, Esq.
Assistant Attorney General
1275 West Washington
Phoenix, AR 85007



1 Copy of the foregoing delivered this
2 23rd day of August, 2000, to:

3 Patti J. Shelton
4 Assistant Attorney General
5 1275 W. Washington Street, CIV/LES
6 Phoenix, Arizona 85007
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SEP 26 2000

Peter L. Ostermiller
500 Kentucky Home Life Bldg.
239 South Fifth Street
Louisville, KY 40202
(502) 583-4881
Counsel for Petitioner, Earl F. McKinney
Pro Hac Vice Admission, April 19, 2000
Order, CV2000-006464



MICHAEL K. JEANES, CLERK
S. SODERSTROM
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

EARL F. McKINNEY
3171 Roxburg Drive
Lexington, KY 40503

Petitioner

v.

ARIZONA STATE BOARD OF
TECHNICAL REGISTRATION
1990 Cambelback Road
Suite 406
Phoenix, AR 85015

Respondent

CV2000-017629

CASE NO. _____

COMPLAINT FOR JUDICIAL
REVIEW OF ADMINISTRATIVE
DECISION

Comes the Petitioner, Earl F. McKinney, by counsel, pursuant to A.R.S. Section 12-901 et seq., and for his Complaint for Judicial Review of Administrative Decision, states as follows:

1. That on or about December 14, 1999, the Respondent, Arizona State Board of Technical Registration, ("Board"), issued a Complaint and a Notice of Hearing regarding the Petitioner, styled In the Matter of Earl F. McKinney, 00F-C-99075-BTR; and that a true and correct

copy of said Complaint and Notice of Hearing is attached hereto as Appendix A.

2. That in a collateral proceeding, Ostermiller v. Silver, Superior Court of Arizona, Maricopa County, CV2000-006464, the Court entered an Order on April 19, 2000, admitting the undersigned for pro hac vice admission for the purpose of representation of the Petitioner, Earl F. McKinney; and that a true and correct copy of said Order is attached hereto as Appendix B.

3. That on or about May 12, 2000, a hearing was held before an Administrative Law Judge in said administrative proceeding; and that on May 19, 2000, said Administrative Law Judge rendered its Recommended Decision, containing Findings of Fact, Conclusions of Law, and a Recommended Order, a true and correct copy of which is attached hereto as Appendix C; and that on June 6, 2000, the Board approved said Findings of Fact, Conclusions of Law and Order.

4. That on or about July 3, 2000, the Petitioner filed a timely Motion for Rehearing or Review, a true and correct copy of which is attached hereto as Appendix D, and is incorporated by referenced herein, as if fully set forth at length herein.

5. That on or about August 18, 2000, the Board entered an Order denying the Petitioner's Motion for Rehearing or Review; that a copy of said Order was mailed by first class mail to the undersigned, as counsel of record for the Petitioner, on or about August 23, 2000; and that a true and correct copy of said Order is attached hereto as Appendix E.

6. That pursuant to A.R.S. Section 12-909(A), the Petitioner states that the grounds on which review is sought are the grounds set forth in the Petitioner's Motion for Rehearing or Review, a true and correct copy of which is attached hereto as Appendix D, and incorporated by

reference herein, as if fully set forth at length herein.

7. That pursuant to A.R.S. Section 12-909(A), the Petitioner designates as part of the record a transcript of the administrative hearing conducted May 12, 2000.

8. That the Petitioner respectfully submits that the administrative action herein above set forth was not supported by substantial evidence, is contrary to law, is arbitrary or capricious or is an abuse of discretion.

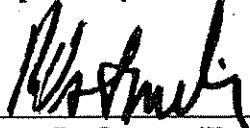
WHEREFORE, the Petitioner, Earl F. McKinney, by counsel, prays as follows:

1. For dismissal, reversal or modification of the administrative decision below as set forth in this Complaint.

2. For his costs herein expended.

4. For all other relief to which he may appear entitled.

Respectfully submitted,



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(502) 583-4881
Counsel for Earl F. McKinney
Pro Hac Vice Admission, April 19, 2000
Order, CV2000-006464

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DAWN WALTON LEE
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State Bar No. 016072
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Fax: (602) 364-3202
Attorneys for Arizona State Board
of Technical Registration

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Respondent .

(Assigned to the Hon.
Kenneth L. Fields)

Respondent Arizona Board of Technical Registration, by and through the undersigned Assistant Attorney General, moves this Court to dismiss the above-captioned matter for failure of prosecution. This motion is supported by the attached Memorandum of Points and Authorities, incorporated herein by reference.

RESPECTFULLY SUBMITTED this 6th day of March, 2002.

Dawn Walton Lee
Assistant Attorney General

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS.

On August 18, 2000, the Arizona State Board of Technical Registration ("Board") issued an Order denying Petitioner's Motion for Rehearing or Review in administrative Case No. 00F-C99075-BTR. Following that decision, on September 26, 2000, Petitioner filed in this Court its Complaint for Judicial Review, and the Board answered. Subsequently, the Board filed a Certification of Record on Review (record of administrative hearing), on October 25, 2000. (See Certification of Record on Review for CV2000-017629, attached as Exhibit "A") The Office of Administrative Hearings filed a Certification of Record on Review (record of administrative hearing), on November 9, 2000. (See Certification of Record on Review for CV2000-017629, attached as Exhibit "B") On November 20, 2000, Petitioner requested a copy of the tape of the administrative hearing held on May 12, 2000, in the above-entitled matter, from the Office of Administrative Hearings. (See letter attached as Exhibit "C") On December 6, 2000 this Court entered a minute entry decision affirming the decision of the Administrative Law Judge. An Agreed Order was subsequently filed on December 18, 2000, setting aside the minute entry decision to allow for inclusion of the audio tape and transcript of the above-mentioned administrative hearing. The Order further provided for an extension of the running of time for briefing, provided for under Rule 6 of the Rules of Procedure for Judicial Review of Administrative Decisions, to begin from

1 the supplemental Certification of Record on Review. The Agreed
2 Order was signed by this Court on January 9, 2001. As a result
3 of this Order, the Petitioner was to transcribe the tape and
4 return the transcript to the Office of Administrative Hearings
5 with a request that the transcript be forwarded to this Court as
6 a supplementation to the previous Certification of Record.
7 Petitioner never submitted this transcript and request to the
8 Office of Administrative Hearings. Since January 2001,
9 Petitioner has failed to further prosecute this judicial review
10 action.

11 II. PETITIONER'S COMPLAINT SHOULD BE DISMISSED.

12 Rule 3.6 of the Local Rules of Practice for the Superior
13 Court, in and for the County of Maricopa ("Rule 3.6") applies to
14 this action pursuant to Rule 1(b) of the Rules of Procedure for
15 Judicial Review of Administrative Decisions ("JRA Rules") and
16 provides in relevant part:

- 17 a. Grounds for Dismissal. Any civil action
18 shall be dismissed for failure to prosecute
19 upon written motion and notice to opposing
counsel, at the discretion of the court, upon
the following grounds and conditions.

20 * * *

- 21 (3) For other appropriate reasons.

22 Pursuant to Rule 3.6, the Board seeks an order dismissing
23 Petitioner's Complaint for the appropriate reason that Petitioner
24 has failed to prosecute its case. Petitioner has delayed
25 adjudication of this matter by failing to take any further action
26 after the Agreed Order was filed with this Court on December

1 18,2000. The Board agreed to set aside this Court's ruling
2 finding in favor of the Board, in order to allow Petitioner the
3 opportunity to supplement the record with the transcript.
4 Petitioner has had over a year to transcribe the tape and forward
5 it to the Office of Administrative Hearings. In light of the
6 foregoing, Petitioner's Complaint should be dismissed.

7 Although dismissal is discretionary with the Court, Local
8 Rule 3.6(a) employs the term "shall" in its provision regarding
9 upon what grounds a Complaint "shall" be dismissed. See *Walter v.*
10 *Wilkinson*, 198 Ariz. 431, 432, 10 P.3rd, 1218, 1219 (App. 2000)
11 ("shall" generally indicates a mandatory provision). The use of
12 this mandatory term implies that although such action by the
13 Court is discretionary, Petitioner should be held to a high
14 standard of proof as to why he failed to prosecute his case,
15 especially considering the ample amount of time which has passed
16 since the last action was taken in January 2001. In short,
17 Petitioner has wholly failed to comply with the applicable court
18 rules. Absent a showing of good cause for this failure, the
19 Board urges the Court to exercise its discretion by dismissing
20 Petitioner's Complaint with prejudice and to enter judgment in
21 favor of the Board.

22 RESPECTFULLY SUBMITTED this 6th day of March, 2002.

23 Janet Napolitano
24 Attorney General

25 
26 Dawn Walton Lee
Assistant Attorney General

1 ORIGINAL filed on this 6th day
2 of March, 2002, with:

3 Clerk of the Maricopa County Superior Court
4 101/201 W. Jefferson
5 Phoenix, Arizona 85003

6 COPY of the foregoing mailed/delivered on
7 this 6th day of March, 2002, to:

8 Hon. Kenneth L. Fields
9 Judge of the Maricopa County Superior Court
10 201 W. Jefferson
11 Phoenix, Arizona 85003

12 Peter L. Ostermiller, Esq.
13 Kentucky Home Life Building, Suite 500
14 239 South Fifth Street
15 Louisville, Kentucky 40202
16 Attorney for Petitioner

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21 Technical Registration
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Secretary to Dawn Walton Lee
360772

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99-0658

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY*** FILED ***
04/11/2002

04/09/2002

CLERK OF THE COURT
FORM V000A

HONORABLE KENNETH L. FIELDS

D. Whitford
Deputy

CV 2000-017629

FILED: _____

EARL F MCKINNEY

EARL F MCKINNEY
C/O PETER L OSTERMILLER
3171 ROXBURG DR
LEXINGTON KY 40503-0000

v.

STATE OF ARIZONA BOARD OF
TECHNICAL REGI

MARY WILLIAMS

RULING

There being no response or opposition,

IT IS ORDERED granting Respondent's Motion to Dismiss for
failure to prosecute with prejudice.

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